



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 21]
No. 21]

नई दिल्ली, शनिवार, अगस्त 13, 1983/श्रावण 22, 1905

NEW DELHI, SATURDAY, AUGUST 13, 1983/SRAVANA 22, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 20 जुलाई, 1983

आ०अ० 61 :—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग पश्चिमी बंगाल सरकार के परामर्श से श्री एन० कृष्णामूर्थी, आई० ए० एस० के स्थान पर श्री पी०के० इरकार, आई० ए० एस०, लोहा और इस्पात नियंत्रक को उनके कार्यभार सम्भालने की तारीख से अगले आदेशों तक पश्चिमी बंगाल राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामनिर्दिष्ट करता है।

[सं० 154/प०ब०/83]

आदेश से,

के० गणेशन, सचिव (भारत निर्वाचन आयोग)

ELECTION COMMISSION OF INDIA

New Delhi, the 20th July, 1983

O. N. 61.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of West Bengal hereby nominates Shri P.K. Sarkar, IAS, Iron and Steel Controller, as the Chief Electoral Officer for the State of West Bengal with effect from the date he takes over charge and until further order vice Shri N. Krishnamurthy, IAS.

[No. 154/WB/83]

By Order,

K. GANESAN, Secy.
(Election Commission of India)

नई दिल्ली, 6 जुलाई, 1983

मा०अ० 62:—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग सन् 1978 की निर्वाचन अर्जी संख्या 2 में दिए गए इलाहाबाद उच्च न्यायालय लखनऊ बेंच के तारीख 15 अप्रैल, 1983 के अभिनिर्णय का प्रकाशित करता है।

[सं० 82/यू०पी०/2/78]

आदेश से

ओ०ना० नागर, अवर सचिव

भारत निर्वाचन आयोग

New Delhi, the 6th July, 1983

O. N. 62.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated the 15th April, 1983 of the High Court of Judicature at Allahabad, Lucknow Bench, in Election Petition No. 2 of 1978.

IN THE HON'BLE HIGH COURT OF
JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

ELECTION PETITION NO. 2 OF 1978

Km. SHARDHA DEVI

.. Petitioner

Versus

K. C. PANT

.. Opp. Parteis

HON'BLE T. S. MISRA, J.—

This petition arises in the following circumstances :—

A notification was published in accordance with Section 12 of the Representation of the People Act, 1951 (hereinafter called the Act) and the elected member of the U.P. Legislative Assembly were called upon to elect eleven members to the council of State. The petitioner Km. Sharda Devi and the opposite parties contested the said election. The poll was held on 28-3-1978. The counting of votes was also done on the same date. After the counting of votes the opposite parties nos. 1 to 11 were declared elected. The petitioner challenged the election of opposite party No. 1, Shri K. C. Pant, praying as follows :—

- “(i) The entire ballot papers of the aforesaid election be rescrutinized and recounted and the election of the respondent No. 1 be declared to be void.
- “(ii) The petitioner be declared as having been duly elected as a member of the Rajya Sabha in place of the respondent No. 1.
- “(iii) Such other further relief may also be granted to the petitioner as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Costs of the petition be awarded to the petitioner.”

The election petition was contested by the opposite-party No. 1 who filed his written statement. Oral and documentary evidence were adduced by both the parties and after hearing the contesting parties the petition was dismissed by this Court. vide order dated 11-12-1979.

The petitioner Shardha Devi filed Civil Appeal No. 277 of 1980 in the Hon'ble the Supreme Court. That appeal was decided on 26-10-1982. The Supreme Court allowed the appeal and the judgement and order of this Court were set aside and the matter has been remanded to this Court for further proceeding according to law. The Supreme Court has directed that this Court shall examine all invalid ballot papers, ascertain the reasons for the rejection, satisfy itself whether the reason is valid or unconvincing, and decide the validity of the ballot paper as a whole or in part and direct computation of the votes over again. The further direction was that it would be open to this Court to take assistance of the Chief Electoral Officer or such other person well versed in computing the votes in this complicated system of counting as considered necessary to determine the final outcome of recount.

After remand the election petition was again taken up for consideration by me. As directed by the Hon'ble the Supreme Court I considered the validity of all the 11 rejected ballot papers in question. For the sake of convenience I marked the said 11 ballot papers by figures 1 to 11. I have held that ballot paper nos. 1 to 7, 9, 10 and 11 are valid as a whole. With regard to ballot paper No. 8 I have held it valid in computation of votes upto and inclusive of the 4th preference and rejected for the preference down below as if the elector had not exercised his further preference which were optional with him. This ballot paper No. 8 has thus been found to be partially valid.

The Hon'ble the Supreme Court in its order dated 11-3-83 has observed that all the points in controversy between the parties and raised in the aforesaid Civil Appeal No. 277(NCE) of 1980 were disposed of by the judgement dated 26-10-82 by the Supreme Court and that the matter was remitted to this Court for the limited purpose of looking at all eleven invalid ballot papers and not the only two as had been done by this Court and after examining each such invalid ballot paper this Court had to decide whether the ballot paper is valid or valid in part or invalid as a whole for the reasons assigned by the Returning Officer and the observations of the Supreme Court. This being the position I have, as pointed out earlier, examined the validity of each of the said 11, rejected ballot papers and have recorded my findings with respect to each one of them as mentioned above. The counting of votes has been done by me over again. The Chief Electoral Officer, U.P.

Lucknow, was asked to either personally appear before this Court and assist the Court in computing the votes or to depute some other competent officer for that purpose. He deputed the Joint Chief Electoral Officer, U.P. Lucknow, to assist the Court in computing the votes. Consequently Sri G. C. Upreti, Joint Chief Electoral Officer, U.P. Lucknow, assisted the Court in computing the votes. The counting continued till late in the evening of 14-4-1983 and ended at about 6-15 p.m., the same day. As a result of the counting it was found that the value of papers of Sri K.C. Pant, opposite-party No. 1, exceeded the value of papers of the election petitioner Km. Shardha Devi by 89. Sri K.C. Pant accordingly stood duly elected under Rule 81(2) of the Conduct of Election Rules, 1961.

The election of the opposite-party No. 1 was not challenged on the ground of any corrupt practice. The grounds on which the election has been challenged mainly are these :—

“That the result of the election has been materially affected by improper rejection of valid votes and improper acceptance of invalid votes; that on a correct and proper counting the petitioner would be found to have received large value of votes than the respondent No. 1; that the Returning Officer had wrongly and illegally rejected eleven ballot papers as invalid; that the Returning Officer had shown only four ballot papers and had not shown the other ballot papers while rejecting them and that had the Returning Officer not illegally rejected eleven ballot papers the value of the requisition quota would have been increased. Moreover, the value of the surplus votes which were distributed would also have increased with the result that the petitioner would have received a higher value of votes as compared to the respondent No. 1 and she would have been declared elected.”

After the remand Sri Banarsi Das filed a power of attorney granted by the election petitioner in his favour in this case and since then Sri Banarsi Das has also been making submissions in the case on behalf of the petitioner. Similarly Sri M.A. Halim appointed Sri Shakir Ali Siddiqi as his attorney to conduct and prosecute the election petition on his behalf. Sri Durjee Gupta also appointed Sri D.N. Mittal as his attorney to conduct and prosecute this election petition on this behalf. Sri Indrapal Singh, opposite-party No. 3, also put in appearance in the case. The learned Counsel for Sri Indrapal Singh was heard with respect to the application moved on his behalf. Similarly Sarvasri Banarsi Dass, D. N. Mittal and Shakir Ali Siddiqi were also heard whenever they wanted to make their submissions in the case. Besides

these persons the learned counsel for the petitioner as also the learned counsel for the opposite-party No. 1 were also heard.

It would be seen that in the instant case the petitioner has not only prayed that the election of the opposite party No. 1 be declared void but she also prayed that she should be declared as having been duly elected as member of the Rajya Sabha in place of the respondent No. 1. The Supreme Court has observed in the order dated 11-3-1983 passed on Civil Misc. petition No. 7566 of 1983 in Civil Appeal No. 277 (NCE) of 1980 (Km. Shardha Devi Vs. K. C. Pant) that all the points in controversy between the parties and raised in appeal were disposed of by the judgement of the Supreme Court and the matter has been remitted to this Court for the limited purpose of looking at all eleven invalid ballot papers and after examining each such invalid ballot paper to decide whether the ballot paper is valid or valid in part or invalid as a whole for the reasons assigned by the Returning Officer and the observations of the Supreme Court and after recording the conclusion with respect to the said 11 ballot papers this Court must recompute the votes. The validity of each aforesaid ballot paper in question has been considered by me. My findings with respect to each ballot paper in question have been recorded separately and the same shall form part of this judgement. Even at the cost of repetition I may say that I have held that the ballot papers in question bearing Nos. 1 to 7, 9, 10 and 11 are valid as a whole and ballot paper No. 8 is partially valid.

I have counted over again all the 421 ballot papers in accordance with Rules 73 to 81 contained in Part VII of the Conduct of Election Rules, 1961. “Count” as defined in Rule 71(2) means :—

- (a) all the operations involved in the counting of the first preferences recorded for candidates;
- (b) all the operations involved in the transfer of the surplus of an elected candidate; or
- (c) all the operations involved, in the transfer of the total value of votes of an excluded candidate.

The Returning Officer had rejected 11 ballot papers and had declared 410 ballot papers valid. He had, therefore, determined the value of 410 ballot papers as 3417 ($410 \times 100 = 41000 + 12 = 3416 + 1 = 3417$). As I have found all the 11 rejected ballot papers also valid the value of 421 ballot papers is 3509 ($421 \times 100 = 42100 + 12 = 3508 + 1 = 3509$). The quota was thus fixed as 3509. The 421 ballot papers were then arranged in parcels according to the 1st preference recorded for each candidate. The number of papers in each parcel was counted and recorded and the total number was also recorded. Then value of the

papers in the parcel of each candidate was determined in the first count under Rule 74. At the end of the first count the opposite-parties Nos. 2 to 11 stood elected on the basis of the new quota as well. The question then remained about the eleventh seat. The election was held by the system of proportional representation by a single transferable vote. The surplus was to be transferred in accordance with the provisions of Rule 79 to the continuing candidates. "Surplus" as defined in Rule 71 (6) means the number by which the value of the votes, original and transferred, of any candidate exceeds the quota. "continuing candidate" as defined in Rule 71(1) means any candidate not elected and not excluded from the poll at any given time. The original value of votes of Abdul Rahman Sheikh as also the original value of votes of Surendra Mohan being equal, each having 4200 value, I drew the lot in the presence of the learned counsel for the parties as also in the presence of the election petitioner for the purpose of transferring the surplus as required by sub-rule (3) of Rule 79. As a result of the lot the surplus of Surendra Mohan first distributed. From the Form 23-B, Return of Election, prepared by the Returning Officer it would appear that the original value of votes of Abdul Rahman Sheikh was 4200 whereas the original value of votes of Surendra Mohan was 4100; hence the surplus of Abdul Rahman Sheikh was first distributed by the Returning Officer. Now as a result of the said lot the surplus of Surendra Mohan was first distributed and then the surplus of Abdul Rahman Sheikh was distributed.

Sub Rule (4) of Rule 79 provides that if the surplus of any candidate to be transferred arises from original votes only. The returning officer shall examine all the papers in the parcel belonging to that candidate, divide the unexhausted papers into sub-parcels according to the next preference recorded thereon and make a separate sub-parcel of the exhausted papers, ascertain the value of the papers in each sub-parcel and of all the unexhausted papers and if the value of the unexhausted papers is equal to or less than the surplus, he recalls transfer all unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred, and if the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers. Under sub-rule (6) of rule 79 the papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to such candidate, and under sub-rule (7) of Rule 79 all papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set apart as finally dealt with. All this procedure was followed while transferring the surplus and I have recorded the same separate which shall form part of this judgement.

Rule 80 of the aforesaid Rules provides that if after all surplus have been transferred, the number of candidates elected is less than the required number, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; and any exhausted papers shall be set apart as finally dealt with. The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred. The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which, he obtained them. Each of such transfers shall be deemed to be a separate transfer but not a separate Count. I followed this procedure also and recorded te same on separate sheets of paper which shall form part of this judgement.

Rule 81 of the said Rules with the filling of the last vacancies. Sub-rule (2) of Rule 81 provides that when at the end of any count only one vacancy remains unfilled and the values of the papers of someone candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate shall be declared elected. In the instant case as the value of votes secured by Km. Shardha Devi was 3256 and the value of votes secured by Shri K. C. Pant was 3345 the value of papers of Sri K. C. Pant exceeded the value of papers of Km. Shardha Devi by 89, hence Sri K.C. Pant according to Rule 81(2) of the Conduct of Election Rules stood elected. His election cannot, therefore, be held to be void. I, therefore, held that the election of the returned candidate Sri K.C. Pant is valid and he was rightly declared elected. The proceedings and result of the said re-counting of votes as mentioned herein above have been noted by me on separate sheets of paper which shall form part of the judgement. The claim of the petitioner that the election of Sri K.C. Pant is void is, therefore, rejected. The petitioner is hence not entitled to the relief that she should be declared as having been duly elected as a member of the Rajya Sabha. Both the reliefs sought for in this election petition cannot, therefore, be granted to the election petitioner.

In the result, the petition fails and is dismissed. However, keeping in view the facts and circumstances of the case I make no order as to costs.

Before parting with the case I would like to express my appreciation for the valuable services rendered by Sri G. C. Upreti, Joint Chief Electoral Officer, U.P. Lucknow, in the recomputation of votes which indeed is a complicated process.

Sd.- T. S. MISRA

dt. 15-4-1983

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH
LUCKNOW

ELECTION PETITION NO. 2 OF 1978

Km. SHRADHA DEVI PETITIONER

Versus

K. C. PANT OPP. PARTIES

Hon'ble T. S. Misra, J.

This election petition filed on 11-5-1978 was dismissed by this Court by judgement dated 11-12-1979. Aggrieved by that decision the petitioner preferred an appeal before the Hon'ble Supreme Court of India, being Civil Appeal No. 277(NCE) of 1980. By judgement dated 26-10-1982 the said appeal was allowed and the case was remitted to this Court. The direction given by the Supreme Court was in the following terms:—

"... Accordingly, this appeal is allowed and the judgement and order of the High Court are set aside and the matter is remanded to the High Court for further proceeding according to law. The High Court shall examine all invalid ballot papers, ascertain the reasons for the rejection, satisfy itself whether the reason is valid or unconvincing, and decide the validity of the ballot paper as a whole or in part and direct computation of the votes over again. The High Court may bear in mind that the decision of the Returning Officer rejecting ballot papers as invalid is subject to review of the High Court in a proper election petition."

The election petition was again taken up for hearing by this Court and an interlocutory order was passed. Aggrieved by that Order the petitioner filed a Civil Misc. petition No. 7566 of 1983 in the Hon'ble Supreme Court in the said Civil Appeal No. 277 (NCE) of 1980. The Supreme Court by its order dated 11-3-1983 directed as under:—

"... We direct that the learned Judge shall give an opportunity to all the parties to the election petition to make their submissions but no oral or documentary evidence."

The notice to each party to the election petition of the fresh hearing should be sent by registered post forthwith at the cost of the petitioner. Apart from this the notice shall be published in two dailies i.e. Northern India Patrika and Swantra Bharat, both published from Lucknow."

We further direct that hearing will be completed and decision will be arrived at within two months from today.

The Supreme Court also observed in the said order that all the points in controversy between the parties and raised in appeal were disposed of by the judgement dated 26-10-1982 and the matter was remitted to the High Court for the limited purpose of looking at all eleven invalid ballot papers and after examining each such invalid ballot paper the High Court should decide whether the ballot paper is valid or valid in part or invalid as a whole for the reasons assigned by the Returning Officer and the observations of the Supreme Court.

The Supreme Court also observed as follows:—

"... In this connection it is necessary to draw the attention of the High Court to rule 73 of the Conduct of Election Rules 1961 which provides specific grounds for rejecting ballot papers as invalid. In other words, any ballot paper can be rejected as invalid on any one or more of the grounds set out in sub-rule (2) of rule 73 and not on any other grounds. Further the requirement is that when a ballot paper is rejected as invalid by the Returning Officer it is obligatory upon him to state in abbreviated form the reason for rejection and the same has to be endorsed on the ballot paper itself."

It was also observed by the Supreme Court that it had already directed how validity of the ballot paper is to be determined and the High Court on remand had merely to examine each ballot paper in the light of the judgement of the Supreme Court. The direction of the Supreme Court to this Court is to look at the ballot paper notice the reason assigned by the Returning Officer and examine its correctness in the light of the judgement of the Supreme Court and determine whether the ballot paper is valid or valid in part or invalid as a whole but there would be no question of recording oral or documentary evidence. After recording the conclusion the High Court has been required to compute the voter over again.

Accordingly notices were issued to the opposite parties by registered post. The notices were also published on 19-3-83 in the two dailies, namely, Northern India Patrika and Swantra Bharat, both published from Lucknow fixing 2-4-1983 for hearing.

I have heard Sri D. P. S. Chauhan, the learned counsel for the petitioner and Sri R. N. Trivedi, the learned counsel for the opposite party No. 1. No other opposite party appeared before me either personally or through his counsel to make his submissions. The learned counsel for the opposite party No. 1 made their submissions with respect to each rejected ballot paper in question.

I have considered the submissions made by the learned counsel for the contesting parties and

have carefully examined each ballot paper in question which had been rejected by the Returning Officer. These are 11 ballot papers and for the sake of convenience and for the purposes of this case I have marked them by figures 1 to 11.

Rule 73 of the Conduct of Elections Rules, 1961 which provides specific grounds for rejecting ballot papers as invalid runs as follows—

“73. Scrutiny and opening of ballot boxes and packets of postal ballot papers,—

(1) The Returning Officer shall :—

- (a) First deal with the covers containing the postal ballot papers, if any, in the manner provided in sub-rules (2) to (7) of rule 54A.
 - (b) then open the ballot boxes, take out from each box and count the ballot papers contained therein, and record their number in a statement;
 - (c) scrutinise the ballot papers taken out of the ballot boxes as well the postal ballot papers taken out from the covers; and
 - (d) separate the ballot papers which he deems valid from those which he rejects endorsing on each of the latter the word ‘Rejected’ and the ground of rejection.
2. A ballot papers shall be invalid on which—
- (a) the figure 1 is not marked; or
 - (b) the figure 1 is set opposite name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
 - (c) the figure 1 and some other figures are set opposite the name of the same candidate; or
 - (d) there is any mark or writing by which the elector can be identified; or
 - (e) there is any figure marked otherwise than with the article supplied for the purpose.

Provided that this clause shall not apply to a postal ballot paper.

Provided further that where the returning officer is satisfied that any such defect as is mentioned in this clause has been caused by any mistake or polling officer, the ballot paper shall not be rejected, namely on the ground of such defect.

Explanation :—The figures referred to in clauses (a), (b) and (c) of this sub-rule may be marked in the international form of Indian numerals or in the Roman form or in the form used in any Indian language, but shall not be indicated in words.”

In the judgement dated 11-3-1983 passed by the Supreme Court in Civil Misc. petition No. 7566 of 1983 in Civil Appeal No. 277(NCE) of 1980 it has been pointed out that any ballot paper can be rejected as invalid on any one or more of the grounds set out in sub-rule (2) of rule 73 and not on any other ground. In civil appeal No. 277 of 1980 (Km. Shradha Devi Vs. Krishan Chandra Pant and others) decided by the Supreme Court on 26-10-1982 reported in A.I.R. (as A.I.R. 1982 Supreme Court 1959). Part VI of the Conduct of Elections Rules, 1961 deals with voting at Elections by Assembly Members and in Council Constituencies. Rule 70 provides that the provisions of Rules 28 to 35 and 36 to 48 shall apply: (a) to every election by assembly members in respect of which no direction has been issued under clause (a) of Rule 68, subject to certain modifications. Rule 37-A deals with method of voting. It is in the following terms :—

“37-A. Method of voting (1) Every elector has only one vote at an election irrespective of the number of seats to be filled.

(2) An elector in giving his vote—(a) shall place on his ballot paper the figure 1 in the space opposite the name of the candidate for whom he wishes to vote in the first instance, and

(b) may, in addition, place on his ballot paper the figure 2, or the figures 2 and 3, or the figures 2, 3 and 4 and so on in the space opposite the name of the other candidates in the order of his preference.

Explanation.—The figures referred to in Clauses (a) and (b) of this sub-rule may be marked in the international form of Indian numerals or in the Roman or in the form used in any Indian language but shall not be indicated in words”.

Part VII of the aforesaid Rules deals with counting of votes at Elections by Assembly Members or in Council Constituencies. Clause (2) of Rule 73 quoted hereinabove sets out the grounds on which a ballot paper shall be declared invalid. Referring to the aforesaid Rules the Supreme Court in paragraph—12 of the report [Shradha Devi v. Krishna Chandra Pant and others, 1982 S.C. 1959 (supra)] has observed :—

“What is obligatory in this system of voting is that every elector must exercise his first preference vote. Rule 37-A(1) specifies that every elector has one vote only irrespective of the number of seats to be filled in at such election. Rest are preferences. In order to exercise franchise at such election the elector is under a duty to give his 1st preference vote. Where the 1st preference vote is not exercised the ballot paper will have

to be rejected as invalid as mandated by R.73(2)(a) which provides that the ballot paper shall be invalid on which figure 1 is not marked. By the combined reading of R.37-A(2)(a) with R.73(2)(a) it unquestionably transpires that in this system of voting as understood in contradiction to single member constituency where a cross has to be placed against the name or the symbol of the candidate the first preference vote is a sine qua non for validity of the ballot paper. The provision contained in Rule 37-A(2)(b) read with Rule 37(2)(a) and (b) would manifestly show that the elector is not required to exercise all preference available to him at the election. To illustrate, if as in the present case there were 11 vacancies, the elector can go on exercising his preferences up to 11th number by putting figures 1 to 11 against the candidates whom the elector wants to accord his preferences according to his own choice. But while exercising the preferences it is obligatory in order to render the ballot paper valid to give first preference vote. It is optional for the elector to exercise or not to exercise his remaining preference."

The Supreme Court further observed :—

"...When voting is in accordance with the proportional representation by means of the single transferable vote it is obligatory to cast the first preference vote for ensueing the validity of the ballot paper and the first preference vote must be so cast as not to leave any one in doubt about it. The remaining preferences are optional with the elector. He may or may not exercise his franchise for the remaining preferences. If he choose not to exercise remaining preferences the ballot paper cannot be rejected as invalid for failure to exercise the remaining preferences. Rule 73(2) is exhaustive of the grounds on which a ballot paper at a voting at election by Assembly members shall be rejected as invalid and on a true and indepth reading of it, it does not transpire that the failure to cast the remaining preferences could invalidate the ballot paper."

The Supreme Court further observed :—

"When then follows? If there is only one vote at such an election and the preferences are as many as there are seats chronologically to be indicated and failure to exercise preferences subsequent to 1st preference would not invalidate the ballot paper, it must follow as a corollary that if the elector has com-

mitted some error in exercising his preferences lower down the ladder the whole of the ballot paper cannot be rejected as invalid. To illustrate, if the elector has with sufficient clarity exercised his preference, say 1 to 5 in chronological order but while exercising his sixth preferences he having the right to exercise the preference upto 11, has committed an error, the error in exercising his sixth preference would not render the whole ballot paper invalid and his preference upto 5 will have to be taken into account while computing the vote."

Illustrating the point the Supreme Court observed :—

"To illustrate the point if as in the present case the voter had option to exercise 11 preferences and if he has exercised his preferences 1 to 5 correctly and unambiguously and has committed an error in exercising sixth preference and it cannot be said with certainty for whom the sixth preference vote was cast, the ballot paper has to be held valid in computation of votes upto and inclusive of the fifth preference and rejected for the preferences down below as if the elector has not exercised his further preference which was optional with him. The ballot paper can thus be partially valid."

Referring to Rule 73(2)(d) the Supreme Court observed that if there is any mark or writing on the ballot paper which enables the electors to be identified the ballot paper would be rejected as invalid. But the mark or writing must be such as would unerringly lead to the identity of the voter. Any mark or writing of an innocuous nature or meaningless import cannot be raised to the level of such suggestive mark or writing as to reveal the identity of the voter. It would imply that there must be some casual connection between the mark and the identity of the voter that looking at one the other becomes revealed. Therefore, the mark or a writing itself must reasonably give indication of the voters' identity. It may be that there must be extrinsic evidence from which it can be inferred that the mark was placed by the voter by some arrangement.

The Supreme Court further laid down :—

"It would, therefore, follow that the mark or writing which would invalidate the ballot paper must be such as to unerringly point in the direction of identity of the voter. In the absence of such suggestion mark or writing the ballot paper cannot be rejected merely because there is some mark or writing on the

ground that by the mark or writing the voter may be identified. One has to bear in mind the difference between 'can be identified' and might possibly be identified."

Further it has been observed :—

"And it must be remembered that every mark or writing does not result in invalidation of the vote. The mark or identification should be such as to unerringly reveal the identity of the voter and the evidence of prior arrangement connecting the mark must be made available. There is no such evidence. Therefore, the ballot papers could not have been rejected on the ground mentioned in Rule 73(2)(d), such marks being in this case some erasures or a bracket."

I shall now proceed to examine each ballot paper in question in the light of the principles laid down by the Supreme Court and determine whether the ballot paper is valid or valid in part or invalid as a whole.

Ballot Paper No. 1.

I have perused the original ballot paper No. 1. The first preference has been marked opposite the name of Sri Kalraj. All other preferences have also been marked. The second preference has been marked opposite the name of Sri Jagdish Prashad, Member, the third preference has been marked opposite the name of Sri G. C. Bhattacharya, the fourth preference has been marked opposite the name of Sri Narendra Singh, the fifth preference has been marked opposite the name of Sri Lakhan Singh, the sixth preference has been marked opposite the name of Sri Rameshwar, the seventh preference has been marked opposite the name of Sri Siddhu Madan Mohan Singh, the eighth preference has been marked opposite the name of Sri Surendra Mohan, the ninth preference has been marked opposite the name of Sri Abdul Rahman Sheikh and the tenth preference has been marked opposite the name of Shradha Devi. The preferences have been marked in Hindi numerals. The preferences 1, 2, 3, 4, 5, 6, 7, 8 and 10 have been correctly marked. The preference ninth has been marked opposite the name of Sri Abdul Rahman Sheikh. It has been marked in Hindi numeral. There are two figures '9' shown in the preference column opposite the name of Sri Abdul Rahman Sheikh. The Returning Officer has rejected this ballot paper under Rule 73(2)(d) of the Conduct of Election Rules, 1961 presumably on the ground that the ninth preference has been made twice against the name of Sri Abdul Rahman Sheikh.

I have to see whether this ballot paper has been properly and correctly declared invalid under Rule 73(2)(d) of the said Rules, Rule

73(2)(d) provides that a ballot paper shall be invalid on which there is any mark or writing by which the elector can be identified. While referring to Rule 73(2)(d) the Supreme Court has laid down that every mark or writing does not result in invalidation of the vote. The mark or identification should be such as to unerringly reveal the identity of the voter and the evidence of prior arrangement connecting the mark must be made available. The Supreme Court has further observed that there is no such evidence, hence the ballot papers could not have been rejected on the ground mentioned in Rule 73(2)(d) such marks being in this case some erasures or a bracket. The contention of the petitioner is that the marking of figure '9' opposite the name of Sri Abdul Rahman Sheikh is not in violation of Rule 73(2)(d). It is also not in violation of Rule 73(2)(c) which says that if the figure 1 and some together figures are set opposite the name of the same candidate then the ballot paper will be invalid. The contention of the opposite party No. 1 is that the elector could be identified because he has placed figure '9' against the name of Sri Abdul Rahman Sheikh twice. It has further been submitted that the voters in the election to the Rajya Sabha were MLAs., who were law makers and that the only reason why figure 9 was written twice was to enable the identity of voter to be disclosed. Referring to the case of Anup Singh vs. Abdul Ghani (A.I.R. 1965 S.C. 815) it has been said that the words used by the legislature are "any mark or writing by which the elector can be identified and thus there should be something more than a mere possibility of identification before a vote can be invalidated. This may even happen when some pre-arrangement is either proved or the marks are so many and of such a nature that an inference of pre-arrangement may be safely drawn without further evidence.

The Supreme Court in the case of Km. Shradha Devi vs. Krishan Chandra Pant and others (A.I.R. 1982 S.C. 1569) has, however, laid down that serious attempt should be made before rejecting ballot papers as invalid to ascertain, if possible, whether the elector has cast his vote with sufficient clarity revealing his intentment and that the mark or identification should be such as to unerringly reveal the identity of the voter and the evidence or prior arrangement connecting the mark must be made available. Then it has been laid down that the mark or writing which would invalidate the ballot paper must be such as to unerringly point in the direction of identity of the voter. In the absence of such suggested mark or writing the ballot paper cannot be rejected merely because there is some mark or writing on the ground that by the mark or writing the voter may be identified. One has to bear in mind the difference between 'can be identified' and 'might possibly be identified'.

There is no evidence of prior arrangement in the instant case connecting the mark and the figure 9 written opposite the name of Sri Abdul Rahman Sheikh in the preference column twice and it does not, in my opinion, unerringly indicate the identity of the voter that being the position I am of the view the Returning Officer fealt in error in declaring the ballot paper no. 1 invalid under Rule 73(2)(d) of the said Rules

Ballot paper No. 2.

In this ballot paper the first preference has been marked opposite the name of Siddhu Madan Mohan Singh, the second preference has been marked opposite the name of Surendra Mohan, the third preference opposite the name of Abdul Rahman Sheikh, fourth preference opposite the name Jagdish Prasad Mathur, Sixth preference opposite of Kalraj, fifth preference opposite the name of the name of G. C. Bhattacharya, seventh preference opposite the name of Narendra Singh, eight preference opposite the name of Rajeshwar ninth preference opposite the name of Lakhman Singh and tenth preference opposite the name of Shradha Devi. This ballot paper was rejected as invalid under Rule 73(2)(d) of the said Rules which, as pointed out earlier, provides that the ballot paper shall be invalid on which there is any mark or writing by which the elector can be identified. It may be reiterated that a ballot paper may be invalidated only if the mark of writing on it unerringly reveals the identity of the voter and the evidence of prior arrangement connecting the mark is made available. In other words, the ballot paper must be such as to unerringly point in the direction of identity of the voter. If there is no such mark or writing which unerringly reveals the identity of the voter the ballot paper cannot be rejected because there is some mark or writing on the ballot paper. The writing or mark should, unmistakably, point to the identity of the voter. The elector has marked the preference no. 1,2,3,4,5,6,7,9, and 10 quite clearly and distinctly. The preference no. 8 marked opposite the name of Rameshwar is also, in my opinion, quite distinct and, at any rate, is not such which could reveal the identity of the voter. There is some erasure or cutting made opposite the name of Krishana Chandra Pant. This in my view, is not sufficient to unerringly reveal the identity of the voter. There is also the absence of evidence of prior arrangement connecting the mark with the voter. It has been submitted on behalf of the opposite party no. 1 that the said ballot paper no. 2 is invalid as the elector is required to indicate his preference under Rule 37(A)(2)(a) of the Conduct of Election Rules, in the space opposite the name of the candidate for whom he wishes to vote. The submission is that there is difference between the phrase "space opposite the name of candidate" and "opposite the name of the candidate". It was pointed out that in the ballot paper there was two columns. In the first column the

name of the candidates are mentioned and in the second column the preference are required to be indicated. In ballot paper no. 2 the preferences have been noted in the column headed as "Adhiman Kran Chinit Keejiye" but the preferences as have been voted opposite the names of the candidates in the column headed as "abhyarthi Ka Naam". In this view of this fact the learned counsel for the opposite party no. 1 submitted that the preferences have not been indicated in the manner required by Rule 37A(2)(a) of the Conduct of Election Rules. I find no force in the contention of the opposite party no. 1. The ballot paper was rejected by the Returning Officer under Rule 73(2)(d) of the said Rules. I have been required by the Hon'ble the Supreme Court that I shall ascertain the reasons for the rejection satisfy myself whether the reason is valid or unconvincing and decide the validity of the ballot paper. The reason recorded by the Returning Officer while rejecting the said ballot paper is that it is "invalid under Rule 73(2)(d)". As stated herein above, the ballot paper shall be invalid under Rule 73(2)(d) if there is any mark or writing by which the elector can be identified. A perusal of the ballot paper would disclose that there is no writing on the ballot paper made by the elector. There is also no such mark made by the elector which would unerringly reveal his identity. Hence the ground on which the Returning Officer declared the said ballot paper as invalid is not sustainable. The Returning Officer did not reject the ballot paper on the ground that preference had not been made in accordance with Rule 37A(2)(a) of the Conduct of Election Rules which provides that an elector in giving his vote shall place on his ballot paper the figure on the space opposite the name of the candidate for whom he wishes to vote in the first instance, and clause (b) thereof provides that he may, in addition, place on his ballot paper the figure 2, or the figures 2 and 3, or the figures 2,3 and 4 and so in the space opposite the names of the other candidates in the order of his preference. The Explanation appended to Rule 37A provides that the figures referred to in clauses (a) and (b) of this Sub-rule may be marked in the international form of Indian numerals or in the Roman form or in the form used in any Indian languages but shall not be indicated in words. The prohibition, therefore, is that the preference should not be indicated in words. In other words, if the preference is indicated in words the ballot paper may be rejected only that ground. The other requirement of Rule 37A is that preference should be indicated in the space opposite the name of the candidate. The original ballot paper is before me. The names of the candidates are printed on the left hand side of the ballot paper. Thereafter there is sufficient space left in the column contained as "Abhvarthi Ka naam", then there is a line drawn dividing the ballot paper into two columns and the second column is captioned as

"adhiman karm chinhit Keejiye," Rule 37(2)(a) merely requires that the preference should be indicated in the space opposite the name of the candidate. If the preference is indicated by a voter in the space opposite the name of the candidate but not in the actual column headed as "Adhiman Karm Chinhit Keejiye" it will not, in my opinion, invalidate the ballot paper. The intentment of the voter is clear. If he marks his preference in space opposite the name of the candidate not in writing but in the international form of Indian numerals or in the Roman form or in the form used in any Indian Language the ballot paper shall be valid. Of course, if there is any writing on the ballot paper made by the elector, the ballot paper will be invalid. If there is any mark made by the voter on the ballot paper which would unerringly reveal his identity the ballot paper would be invalid. The ballot paper no. 2 cannot be held to be invalid on the ground that the preferences were not marked by the voter in the column "Adhiman Karm Chinhit Keejiye" but in the space left in column no. 1 opposite the name of the candidate. I, therefore, hold that the Returning Officer fell in error in rejecting the ballot paper no. 2 as invalid under Rule 37(2)(d). It is also not invalid on any other ground.

Ballot Paper No. 3.

In this ballot paper the preferences have been marked by the voter in the column headed as "Adhiman Karm Chinhit Keejiye". The first preference has been noted opposite the name of M. A. Halim, the second preference has been noted opposite the name of Siddhu Madan Mohan Singh, the third preference opposite the name of the Shardha Devi, the fourth preference opposite the name of G.C. Bhattacharya, the fifth preference opposite the name of Kalraj, the sixth preference was set opposite the name of J. P. Singh the seventh preference opposite the name of Surendra Mohan, the eighth preference opposite the name of Abdul Rahman Sheikh, the ninth preference opposite the name of Jagdish Prasad Mathur, the tenth preference opposite the name of Lakhan Singh and the eleventh preference opposite the name of Rameshwar. This ballot paper has been rejected by Returning Officer as invalid under Rule 73(2)(d). It would be seen that the first preference has been marked by the voter opposite the name of M. A. Halim in Roman form of numeral, whereas the other preferences have been marked by him in international form of Indian numerals. It is also to be seen that the fourth preference has been marked twice opposite the name of G. C. Bhattacharya, one in the international form of Indian numerals and the other as '4' in Hindi. The contention of the opposite party No. 1 is that the figure '4' in Hindi opposite the name of G. C. Bhattacharya has been placed in bracket, and the elector has used numerals of three languages

namely Roman, Hindi and English to indicate his preference. Referring to Article 343, 344, 345 and 350 of the Constitution and the Eighth Schedule which recognise 16 languages to be official languages and also to the Explanation to Rule 73, it was urged that the disjunctive 'or' has to be read as 'or' in the said explanation and should not be read as 'and'. Hence the preference indicated in numerals of three languages has invalidated the ballot paper. In this connection it was also submitted that there are 16 official languages recognised in the Constitution and numeral 1 in Hindi, Sanskrit, Marathi, Gurumukhi and Gujarati is exactly the same as numeral 7 in Bengali Assamee, Malayalam and also exactly like the numeral 9 in English, Urdu, Sindhi and Kashmiri, numeral 4 in English closely resembles numeral 5 in Gujarati, Marathi and Gurumukhi and numeral 4 in Bengali, Assamee, Gujarati, Hindi, Sanskrit, Kannada, Marathi, Gurumukhi and Telugu is like numeral 8 in English. The learned counsel for the opposite party no. 1 has also submitted a chart showing these differences and had also produced books dealing with such numerals.

Now, Rule 73(2)(a) of the Conduct of Election Rules requires that figure 1 must be marked on the ballot paper. It is not marked the ballot paper shall be invalid. If there is figure 1 marked on the ballot paper, the first preference would be shown irrespective whether the figure was put down in the international form of Indian numerals or in the Roman form or in the form used in any Indian Language. The figure 1, in the instant case, has been marked in Roman form. Explanation to Rule 37A provides that the figure may be marked in the Roman form. The marking of figure 1 on the ballot paper is necessary to indicate first preference without which the ballot paper would be invalid. If first preference is indicated by marking figure 1 in one form or the other as mentioned in the Explanation to Rule 37A aforesaid, that would, in my opinion, be in full compliance with Rule 73(2)(a) and the ballot paper would not be invalid. The other preferences were marked in international form of Indian numerals. That is also permissible. The complaint, however, is that the preference marked opposite the name of G. C. Bhattacharya is not in international form but also in Hindi and figure 4 in Hindi has been put in bracket. The elector, as pointed out in Kumari Shardha Devi's case (Supra), must cast his vote with sufficient clarity revealing his intentment. The elector wanted to give fourth preference to G. C. Bhattacharya. This intention of the elector is clearly borne out by the fact that he has marked '4' not only in international form but also in Hindi. The fact that fourth preference in Hindi has been placed within bracket, will not invalidate the vote is also supported by the decision of the Supreme Court in Kumari Shradha Devi's case (supra). If the elector has marked his preference in one form or the other or in more than one form

as prescribed by rule 37A the ballot paper would not be invalid if the intention of the voter is revealed with sufficient clarity. This intention of the voter was revealed with sufficient clarity when he put figure '4' opposite the name of G. C. Bhattacharya once in Hindi and again in English. Rule 73(2)(c) says that a ballot paper shall be invalid on which the figure 1 and some other figures are set opposite the name of the same candidate. There is no prohibition under sub-rule (2) of Rule 73, that the same figure cannot be repeated twice by the elector while indicating his preference. The prohibition is that with figure 1 some other figures would not be set opposite the name of the same candidate. So far as the ballot paper no. 3 is concerned, figure 1 has been set opposite the name of M. Halim. No other figure has been marked along with figure 1 opposite the name of M. A. Halim. The figure 4 written in Hindi as also in international form opposite the name of G. C. Bhattacharya, would not hence invalidate the ballot paper on that ground. It also does not disclose unerringly the identity of the voter. The Returning Officer, therefore, fell in error, in rejecting the ballot paper no. 3 as invalid under Rule 73(2)(d) of the Rules.

Ballot Paper No. 4.

This ballot paper has also been rejected by the Returning Officer as invalid under Rule 73(2)(d) of the Conduct of Election Rules. The first preference has been marked opposite the name of Kalraj, the second preference opposite the name of Jagdish Prasad Mathur, the third preference opposite the name of G. C. Bhattacharya, the fourth preference opposite the name of Narendra Singh, the fifth preference opposite the name of Rameshwar, the sixth preference opposite the name of Lakhan Singh, the seventh preference opposite the name of Siddhu Madan Mohan Singh, the eighth preference opposite the name of Surendra Mohan, the ninth preference opposite the name of Abdul Rehman Sheikh and tenth preference opposite the name of Shradha Devi. The preferences have been marked in Hindi numerals. They have been marked in the space opposite the names of the aforesaid persons twice. There are no erasures and no cuttings there is also no mark or writing on the ballot paper. The contention of the opposite-party no. 1 is that the ballot paper no. 4 is invalid on the ground of Rule 37A(2)(a). For the reasons which have been set out hereinabove, in my view, the ballot paper could not have been rejected under Rule 73(2)(d) because there is no mark which unerringly reveals the identity of the voter. There is also no writing on it. As already held hereinabove the preference marked on this ballot paper are also not violative of Rule 37A(2)(a). No doubt Rule 73(2)(c) provides that if figure 1 and some other figures are set opposite the name of the same candidate, the ballot paper would be invalid. In the ballot paper

no. 4 the first preference has been set opposite the name of Kalraj. The first preference has been noted twice but there is no other figure along with figure 1 set opposite the name of Kalraj. The preference marked, therefore, is not violative of Rule 73(2)(c) as well. In my opinion, this ballot paper was wrongly rejected as invalid under Rule 73(2)(d). It is valid.

Ballot Paper No. 5

This ballot paper has been rejected as invalid under Rule 73(2)(d). The first preference has been set opposite the name of Siddhu Madan Mohan Singh, the second preference opposite the name of Surendra Mohan, the third preference opposite the name of Abdul Rahman Sheikh, the fourth preference opposite the name of Kalraj, the fifth preference opposite the name of Jagdish Prasad Mathur, the sixth preference opposite the name of G. C. Bhattacharya, the seventh preference opposite the name of Narendra Singh, the eighth preference opposite the name of Rameshwar, the ninth preference opposite the name of Lakhan Singh and the tenth preference opposite the name of Shradha Devi. These preferences have been marked in Hindi numerals. The first preference opposite the name of Narendra Singh, the elector has marked his preference no. 8 opposite the name of Ram Chandra Mahrotra and had also marked ninth preference opposite the name of Rameshwar. He had then scored out the eighth preference marked opposite the name of Ram Chandra Mahrotra and also scored out the ninth preference marked opposite the name of Rameshwar. Instead he set the eighth preference opposite the name of Rameshwar. This scoring out of eighth preference and ninth preference opposite the names of Ram Chandra Mahrotra and Rameshwar respectively and then setting the eighth preference opposite the name of Rameshwar do not reveal the identity of the elector. There is absence of evidence to correct the identity with the scoring out of the figures 8 and 9 aforesaid. On the contrary, the scoring out of preferences no. 8 and 9 and then writing the figure 8 opposite the name of Rameshwar reveals the intention of the elector with sufficient clarity. The contention of the opposite-party no. 1 to the contrary, is not accepted. Alternatively, it was submitted on behalf of the opposite-party that the said ballot paper should be rejected after seventh preference as the intention of the voter is not clear beyond seventh preference. I do not find any force in this contention also. The intention of the voter was quite clear. He marked his eighth preference opposite the name of Rameshwar. The Returning Officer, in my opinion, committed an error in rejecting this ballot paper as invalid under Rule 73(2)(d) of the said Rules.

Ballot paper No. 6.

It has been rejected under Rule 73(2)(b). Similarly ballot paper no. 10 has also been rejected

under Rule 73(2)(b), whereas ballot papers nos. 7, 8, 9, and 11 have been rejected under rule 73(2)(d) of the said Rules. I shall, therefore, firstly deal with the remaining ballot papers which have been rejected under Rule 73(2)(d) and I shall deal with ballot papers nos. 6 and 10 thereafter because they have been rejected under rule 73(2)(b).

Ballot paper No. 7

The preference in this ballot paper have been marked in Hindi numerals. The Returning Officer rejected this ballot paper as invalid under Rule 73(2)(d). The first preference was marked by the elector opposite the name of Narendra Singh, the second opposite the name of Rameshwar, the third preference opposite the name of Lakhan Singh, the fourth preference opposite the name of Siddhu Madan Mohan Singh, the fifth preference opposite the name of Surendra Mohan, the sixth preference opposite the name of Abdul Rahman Sheikh, the seventh preference opposite the name of Kalraj, the eighth preference opposite the name of Jagdish Prasad Mathur, the ninth preference opposite the name of G. C. Bhattacharya, and tenth preference opposite the name of Shradha Devi. It has been submitted on behalf of the opposite party no. 1 that this ballot paper is invalid on the ground that preferences have not been indicated in the space left for it. Hence it is violative of Rule 37A(2)(a) and Rule 73(2)(d) and that there is erasure mark opposite the name of Shradha Devi which can lead to the identity of the elector. The preferences have been marked in the space opposite the names of the candidate. They have, no doubt, not been marked in the column captioned 'Adhiman Kram Chinit Keejiye' but have been marked in the column 'Abhyarthi Ka Naam'. I have already held above that if preferences have been marked in such a manner the ballot paper would not be invalid and would not be violative of Rule 37A(2)(a). There is no doubt a cutting or erasure opposite the name of Shradha Devi. The tenth preference was set opposite her name. That is quite clear. The cutting or erasure is not such which would, in my opinion, unerringly reveal the identity of the voter. There is also absence of evidence in this behalf. The Returning Officer, therefore, in my opinion, fell in error in rejecting this ballot paper as invalid under Rule 73(2)(d) of the Rules.

Ballot paper No. 8.

The preferences have been marked in Hindi numerals in this ballot paper. The first preference has been set opposite the name of Jagdish Prasad Mathur, the second preference opposite the name of Kalraj, the third preference opposite the name of Lakhan Singh, the fourth preference opposite the name of Rameshwar, the sixth preference opposite the name of Siddhu Madan Mohan Singh, seventh preference opposite the name of

Surendra Mohan, the eighth preference opposite the name of G. C. Bhattacharya, the ninth preference opposite the name of J. P. Singh and the tenth preference opposite the name of Shradha Devi. The contention of the opposite party no. 1 is that there is a mark in the nature of initial which can, clearly, lead to the identity of the elector in addition to the preference no. 8 marked opposite the name of G. C. Bhattacharya. Hence it is invalid under Rule 73(2)(d). It was also contended that the preference no. 8 has been indicated opposite the names of two persons namely G. C. Bhattacharya and Abdul Rahman Sheikh. Alternatively it was submitted that the said ballot paper does not contain any preference 5. Consequently, the said ballot paper is invalid beyond preference 4. The submission on behalf of the petitioner is that figure 8 opposite the name of G. C. Bhattacharya is very clear and definite and that there is no such mark by which the voter can be identified. It was also submitted on behalf of the petitioner that all the preference are definite and eighth preference is also clear but the fifth mark opposite the name of Abdul Rahman Sheikh is rather indistinct. But in view of the opinion of the Supreme Court, the Court should try to ascertain if a voter has indicated his intention with sufficient clarity. The submission was that all the marks except the fifth one are clear and this can be the mark fifth though indistinct it may be. Hence the ballot paper could not have been rejected as invalid.

The Supreme Court in paras 12 and 13 of the judgement in *Km. Shradha Devi V. Krishna Chandra Pant and others* (A.I.R. 1982 Supreme Court, 1569) has laid down the law in this respect. It has been held that :

"When voting is in accordance with the proportional representation by means of the single transferable vote it is obligatory to cast the first preference vote for ensuring the validity of the ballot paper and the first preference vote must be so cast as not to leave any one in doubt about it. The remaining preferences are optional with the elector. He may or may not exercise his franchise for the remaining preference. If he chooses not to exercise remaining preferences the ballot papers cannot be rejected as invalid for failure to exercise the remaining preferences. Rule 73(2) is exhaustive of the grounds on which a ballot paper at a voting at election by Assembly members shall be rejected as invalid and on a true and indepth reading of it, it does not transpire that the failure to cast the remaining preferences would invalidate the ballot paper."

It has further been held that :

"If there is only one vote at such an election and the preferences are as many as there

are seats chronologically to be indicated and failure to exercise preferences subsequent to first preference would not invalidate the ballot paper, it must follow as a corollary that if the elector has committed some error in exercising his preferences lower down the ladder the whole of the ballot paper cannot be rejected as invalid." Illustrating the point, the Supreme Court said "If the elector has with sufficient clarity exercised his preferences, say 1 to 5 in chronological order but while exercising his sixth preference, he having the right to exercise the preference upto 11, has committed an error, the error in exercising his sixth preference would not render the whole ballot paper invalid and his preference upto 5 will have to be taken into account while computing the vote."

Further the Supreme Court pointed out to illustrate the point that :

"if as in the present case the voter had option to exercise 11 preferences and if he has exercised his preferences 1 to 5 correctly and unambiguously and has committed an error in exercising sixth preference and it cannot be said with certainty for whom the sixth preference vote was cast, the ballot paper has to be held valid in computation of votes upto and inclusive of the fifth preference and rejected for the preferences down below as if the elector has not exercised his further preferences which was optional with him. The ballot paper can thus be partially valid."

I shall examine the instant ballot paper in the light of the law laid down by the Supreme Court in *Km. Shradha Devi's case (Supra)*. The first preference, as pointed out hereinabove, was marked opposite the name of Jagdish Prasad Mathur. It is quite distinct and clear. The second preference was marked opposite the name of Kalraj. That too is quite distinct and clear. The third clear. The third preference has been marked opposite the name of Lakhan Singh which is also clear and distinct. The fourth preference has been marked opposite the name of Rameshwar which also is clear and distinct. About the fifth preference, it has been said on behalf of election petitioner, that the fifth preference is marked indistinctly opposite the name of Abdul Rahman Sheikh. The sixth preference is marked clearly and distinctly opposite the name of Siddhu Madan Mohan Singh and the seventh preference is marked opposite the name of Surendra Mohan. The eighth preference is said to be marked opposite the name of G. C. Bhattacharya. There is some mark which has been scored out also opposite the name of G. C. Bhattacharya. All these preferences have

been marked by the voter in Hindi numerals. I have to see whether the preference marked opposite the name of Abdul Rahman Sheikh is preference no. 5 as contended by the petitioner or is preference no. 8 as contended by the opposite-party no. 1. Both the petitioner and opposite party no. 1 admit that the eighth preference has been marked opposite the name of Sri G. C. Bhattacharya. The dispute between the petitioner and the opposite party no. 1 is with respect to the mark set opposite the name of Abdul Rahman Sheikh. The contention of the opposite party no. 1 is that the elector has not marked his fifth preference and he has, thus, not expressed his choice so far as fifth preference is concerned. The contention of the petitioner is that the voter has expressed his choice by marking the fifth preference opposite the name of Abdul Rahman Sheikh but the mark is indistinct. I have to resolve this dispute after perusing the original ballot paper. I have perused it. I may say here that the preferences have been marked by the voter in Hindi numerals and that I am fully conversant with Hindi numerals. I therefore, need no expert aid to find out as to whether a particular preference marked in Hindi numeral is preference no. 5 or 8. After carefully perusing the numeral of the preference set opposite the name of Abdul Rahman Sheikh, I am of the definite opinion that the preference marked is preference no. 8 and not preference no. 5. The figure is clearly 8 in Hindi and is not 5. Thus, in the ballot paper no. 8 here the voter had option to exercise 11 preferences. He exercised his preferences 1 to 4 correctly and unambiguously. He has not marked his fifth preference in the ballot paper. The preference marked opposite the name of Abdul Rahman Sheikh cannot be said to be the fifth preference. It is clear that it is the eighth preference. The eighth preference was also marked opposite the name of G. C. Bhattacharya. In view of the law laid down by the Supreme Court in *Shradha Devi's case (supra)* this ballot paper no. 8 is held valid in computation of votes up to and inclusive of the 4th preference and rejected for the preferences down below as if the elector had not exercised his further preferences which were optional with him. This ballot paper is thus partially valid.

Ballot paper No. 9 :

It has been rejected under Rule 73(2)(d) of the said Rules. The preferences have been marked in Hindi numerals. The first preference has been set opposite the name of Sri G. C. Bhattacharya, the second preference opposite the name of Sri Narendra Singh, the third preference against the name of Sri Rameshwar, the fourth preference against the name of Sri Lakhan Singh, the fifth preference against the name of Sri Siddhu Madan Mohan Singh, the sixth preference against the name of Sri Surendra Mohan, the seventh preference against the name of Sri Abdul Rahman Sheikh, the eighth preference against the name of Sri Kalraj,

the ninth preference against the name of Sri Jagdish Prasad Mathur and the tenth preference has been set opposite the name of Shradha Devi. All the preferences have been clearly and distinctly set opposite the names of the candidates in question. There is, however, a cutting opposite the name of Sri Jagdish Prasad Mathur. It was said on behalf of the opposite party no. 1 that the mark against the name of Sri Jagdish Prasad Mathur is in the nature of initial which can lead to the identification of the voter and the ballot paper is thus invalid under rule 73(2)(d) of the said Rules. I do not find any merits in this contention. I have perused the mark and in my opinion it is not an initial and does not unerringly reveal the identity of the voter. There is also no connecting evidence. This ballot paper, in my opinion, was therefore, wrongly rejected as invalid under Rule 73(2)(d).

Ballot paper No. 11 :

It has been rejected under rule 73(2)(d) of the said Rules by the Returning Officer. The preferences have been marked in Hindi numerals. The first preference has been set opposite the name of Sri Rameshwar, the second preference opposite the name of Sri Lakhan Singh, the third preference opposite the name of Sri Siddhu Madan Mohan Singh, the fourth preference opposite the name of Sri Surendra Mohan, fifth preference opposite the name of Sri Abdul Rahman Sheikh, the sixth preference opposite the name of Sri Kalraj, the seventh preference opposite the name of Sri Jagdish Prasad Mathur, the eighth preference opposite the name of Sri G. C. Bhattacharya, the ninth preference opposite the name of Sri Narendra Singh and the tenth preference has been set opposite the name of Shradha Devi. The contention of the opposite party No. 1 is that there is an initial against the name of Sri G. C. Bhattacharya which can lead to the identification of the voter. Secondly there is no preference 9. Consequently the ballot paper is invalid beyond preference 7.

The submission on behalf of the petitioner was that preference figure 8 against the name of Sri G. C. Bhattacharya is clear, definite and visible and the overwriting is not such a mark which can unerringly lead to the identification of the voter. I find force in the contention of the petitioner. The preference figure 8 against the name of Sri G. C. Bhattacharya is clear. No doubt there is overwriting but the intendment of the voter is quite discernible. There is no initial. The ninth preference has been distinctly marked opposite the name of Sri Narendra Singh. In my opinion, the Returning Officer fell in error in rejecting this ballot paper as invalid under Rule 73(2)(d) of the said Rules.

Ballot paper No. 6 :

This ballot paper has been rejected by the Returning Officer as invalid under Rule 73(2)(b) of the aforesaid Rules. The original ballot paper

is before me and I have carefully perused the same. The plea taken by the election petitioner in her petition is that the Returning Officer had illegally rejected the 11 ballot papers in question. In other words, her plea in the election petition is that this ballot paper No. 6 was also illegally rejected by the Returning Officer. However, during the course of argument Sri D. P. S. Chauhan, the learned counsel for the petitioner stated as follows :—

“This ballot paper No. 6 has been rightly rejected under Rule 73(2)(b) by the Returning Officer as there is figure 1 against the name of Sri G. C. Bhattacharya and also against Smt. Manohara.” He has also submitted that the respondent No. 1 in his written statement has considered that it has been rightly rejected and he has produced four witnesses. Further submission in this connection made on behalf of the petitioner was that Sri Habibul Rahman (R.W. 1) has clearly deposed before this Court that there is figure 1 against the name of Smt. Manohara and also another candidate and that he had conceded before this Court that it had been rightly rejected and that he did not raise any objection as to its rejection at any stage. Further it was submitted on behalf of the petitioner that the election agent of respondent No. 1 Sri Dev Bahadur Singh, M.L.A., M.A.L.L.B. has deposed before this Court that he saw all the rejected ballot papers and according to him one ballot paper contained figure 1 against two candidates. One of them was Smt. Manohara. She did not raise any objection against the rejection of any ballot paper. Further it was submitted that the counsel for the respondent No. 1 had made a statement before this Court on 14-2-1983 in contravention of the pleading and the evidence produced before this Court that there may be some manufacturing defect against the name of Smt. Manohara in his ballot paper marked by figure 6 in the preference column which appears to have inherent manufacturing defect although it can also be read as 1. The learned counsel for the petitioner referring to the order of the Hon'ble Supreme Court dated 11-3-1983, submitted that the Supreme Court has clearly held that no oral or documentary evidence can be permitted at this stage by re-opening the entire case afresh. The emphasis was made to the observation of the Supreme Court in the said order of 11-3-1983 which is in the following terms :—

“Let it be distinctly understood in no unambiguous terms that the scope of remand to the High Court was limited, specific circumscribed and unambiguous and there is no question of reopening of the entire case afresh which *prima facie* appears to be the attempt and the learned Judge appears to have accepted it. We direct that the learned Judge should give an opportunity to all the parties to

the election petition to make their submissions but no oral or documentary evidence."

Further it was argued that the learned counsel for the respondent No. 1 had conceded that there is figure 1 against Smt. Manohara and that he was in doubt as to its veracity and he wanted to remove his doubt by an expert evidence. Then it was submitted that this Court has also satisfied itself that figure 1 is set opposite the name of Smt. Manohara. The Court in its order dated 14-2-1983 has made certain observations in that behalf to which reference was made and hence it was urged that the recorded opinion of this Court is that the dispute about the definiteness of figure 1 against the name of Smt. Manohara can obviously be resolved by appreciation of evidence. Then it was said that if in the opinion of this Court figure 1 against Smt. Manohara is not in ink it is to be rejected under Rule 73(2)(c) and also under 73(2)(b).

The submission on behalf of the opposite party No. 1 with respect to ballot paper No. 6 is as under :—

"It is submitted that the ballot paper No. 6 is valid and was wrongly rejected as invalid under Rule 73."

The argument was as follows :—

"From a bare look at the Xerox copy of the ballot paper it is apparent that against the name of Manohara there is no mark but there is a manufacturing defect or an impurity in the ballot paper. The tip mark is in the nature of a 'Y'. The said ballot paper was shown to the counsel of the parties. It was stated on behalf of respondent 1 that the mark against the name of Manohara appeared to be manufacturing defect in the ballot paper. On a close scrutiny of the ballot paper on 2nd April, 1983 it is apparent that there is some hair like substance which has got stuck against the name of Manohara. The tip of the said substance is coming off. During the oral submission it was clearly stated that given a pair of forceps or a pin the said impurity can be peeled off from the ballot paper. The said impurity is dark brown in colour which is not the colour of any ink or a pencil normally used."

The further submission was that in paragraph 21 of the election petition the petitioner had clearly stated that all the 11 ballot papers were wrongly rejected. The petitioner cannot be allowed to resile back from the pleadings and cannot be allowed to urge or to make any concession that the ballot paper 6 was rightly rejected. In this

connection reference was made to the provisions of Order VI Rules 2 and 7 and to the principles underlying the said provisions. It was, therefore, urged that no evidence can be allowed against the pleadings of the parties. The learned counsel placed reliance in support of his contention on (i) A.I.R. 1953 S.C. 335 (M/s. Trojan & Co.; Vs. RM. N. N. Nagappa Chettiar), (ii) A.I.R. 1968 S.C. 1083 (Mrs. Om Prabha Jain V. Abnash Chand and another), (iii) A.I.R. 1930 Privy Counsel 57 (Siddik Mahomed Shah V. Mt. Saranond others), (iv) A.I.R. 1957 Patna 482 (Paremeshwari Devi and others V. Khusali Mandal and others), (v) A.I.R. 1957 Patna 586 (Dominion of India V. Raj Bahadur Seth Bhikhray Jaipuria) and (vi) A.I.R. 1974 All. 413 (Mahboob Ullah V. Jwala Prasad Kajriwal and another). It was hence urged that the petitioner cannot be allowed to make any submission against her own pleadings.

In the rejoinder arguments on behalf of the petitioner it has been said :—

"Ballot paper No. 6 has been rejected under Rule 73(2)(b) or (d). It is (b) or (d) is indistinct." Then it has been said that in para 14 of his written statement the respondent No 1 Sri K. C. Pant has averred while rejecting the contention of the petitioner that it was the respondent who received first preference vote in one of the rejected ballot papers but the respondent did not make a common cause with the petitioner for the inspection of the 11 ballot papers to substantiate the veracity of his claim. He always opposed the request of the petitioner for the inspection of the ballots." It was said that all the four witnesses produced by the respondent No. 1 had confined their evidence only to substantiate that there was no case for inspection of the rejected ballot papers as there were no specific averments in the petition that the said witnesses did not make any specific deposition about the rejection of 10 ballot papers, one under Rule 73(2)(b) and 9 others under Rule 73(2)(d) but they have made a specific deposition about this ballot paper No. 6. In this connection attention was drawn to the statements of Habibul Rahman and Deo Bahadur Singh. It was urged that the respondent No. 1 did not make out any case before this Court that this ballot paper should be accepted as it contains preference against Sri K. C. Pant which is as good as first preference. The attention was also drawn to the deposition of the Returning Officer made in this Court to the effect that he had asked his 4 or 5 assistance each one to take one defective ballot paper with him and show the same to the person present in the room from closer range without allowing any one to handle the same and now the counsel for respondent No. 1 argues that there is no first preference against Sri K. C. Pant in any of these ballot papers. The further submission was that the petitioner in her objection has made specific

avermment about ballot paper No. 10 rejected under rule 73(2)(d) which was inspected by the petitioner and examined by this Court. The petitioner had also made specific averment regarding ballot paper No. 11 which was shown to her and rejected under Rule 73(2)(b). She also made averments about ballot papers No. 5 in which first preference is opposite Sri Siddhu but that was not permitted to be seen by this Court and that it had all along been the case of the petitioner that she was not permitted to inspection all the ballot papers. It was done of the issues. Attention was also drawn to my order dated 14-2-1983 to support the argument that there is figure 1 set opposite the name of Sm. Manohara and it has been submitted in the written rejoinder arguments that I have already recorded a finding that there is figure 1 against Shri G. C. Bhattacharya and also figure-1 against Smt. Manohara but not in ink and in the light of that finding of the Court this ballot paper should be rejected under Rule 73(2)(b) and (e).

In the written rejoinder arguments it is stated at the very outset with respect to ballot paper No. 6 that this ballot paper has been rejected under Rule 73(2)(b) or (d) and that whether it is (b) or (d) is indistinct. The endorsement of the Returning Officer while rejecting the ballot paper No. 6 is to be found at two places and a perusal of this endorsement would clearly show that the said ballot paper has been rejected under Rule 73(2)(b). The endorsement on the reverse of the ballot paper is duly signed by the Returning Officer and is quite distinct. Letter 'b' has been clearly written by the Returning Officer and is visible and no indistinct as alleged. So this ballot paper was rejected by the Returning Officer under Rule 73(2)(b) of the said Rules. The preferences have been marked by the elector on this ballot paper in international form in English numerals. These preferences have been marked in ink. The first preference has been marked opposite the name of Sri G. C. Bhattacharya, the second opposite the name of Sri Surendra Mohan, the third opposite the name of Sri Siddhu Madan Mohan Singh, fourth opposite the name of Sri Krishna Chandra Pant, fifth opposite the name of Sri Jagdish Prasad Mathur and the Sixth opposite the name of Sri Rameshwar.

As pointed out earlier the submission on behalf of the petitioner is that there is a mark of the first preference also opposite the name of the Smt. Manohara and as the elector has marked first preference opposite the name of two candidates this ballot paper was rightly rejected. The contention of the opposite-party No. 1 is that there is no mark of the first preference opposite the name of Manohara and that what appears to be is that the alleged mark is in fact manufacturing defect in the paper itself which would hence not invalidate the ballot paper. True it is that the ballot paper has been rejected under Rule 73(2)(b) of the said Rules

by the Returning Officer which provides that the ballot paper shall be invalid on which the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply. The case of the petitioner as set out in the election petition was that the Returning Officer had illegally rejected all the 11 ballot papers which means that this ballot paper No. 6 was also wrongly rejected by the Returning Officer. The fact was denied by the opposite-party No. 1 in the written statement. The original ballot paper was summoned from the Returning Officer and it is before me. The petitioner as also the opposite-party No. 1 had examined certain witnesses. The petitioner has referred to the statement of Habibul Rahman who was appointed as counting agent by Smt. Manohara. In his cross-examination he had stated that he was shown all the 11 rejected ballot papers. He further stated as follows :

"I do not just now recollect whether in any of those eleven rejected ballot papers the first preference vote was given to Km. Shradha Devi. Out of these eleven rejected papers there was one ballot paper in which the first preference mark was noted against the name of Smt. Manohara and another first preference mark was noted against the name of one more candidate and that is why the said ballot paper was rejected as invalid. I do not know what preference mark was noted against the name of Kum. Shradha Devi in the said ballot paper. I do not know whether the first preference mark noted against another candidate in the said ballot paper was tempered but I do remember that there was no cutting or any other tempering in the first preference mark noted against the name of Smt. Manohara in the said ballot paper, I did not raise any objection with regard to that ballot paper."

Shri Deo Bahadur Singh (R. W. 2) had deposed in his cross-examination as follows :—

"After seeing the ballot paper I did not raise any objection with regard to the validity of any of the aforesaid ballot papers. I had seen only eleven ballot papers which had been finally rejected. I had seen no other ballot paper. So far as I remember there was one ballot paper out of those eleven rejected ballot papers in which the first preference mark had been put against the name of Sri K. C. Pant and also most probably against the name of Smt. Manohara."

In view of the aforesaid statements and the averments made in the written statement it was submitted on behalf of the petitioner that it is not now open to the opposite party No. 1 to contend that the elector had not marked his first preference opposite the name of Manohara in ballot paper No. 6.

Before I deal with these contentions it would be necessary to refer to my order dated 14-2-1983

to which reference was made by the learned counsel for the petitioner. That order came to be passed in the following circumstances.

The election petition was dismissed by me by an order dated 11-12-1979. The petitioner filed a Civil Appeal No. 277 (NCE) of 1980 in the Hon'ble Supreme Court. That appeal was desir- ed on 26-10-1982. The order under appeal was set aside and the case was remanded to this Court for further proceedings according to law. The direction of the Supreme Court was as follows :—

“The High Court shall examine all invalid ballot papers, ascertain the reasons for the rejection, satisfy itself whether the reason is valid unconvincing, and decide the validity of the ballot paper as a whole or in part and direct computa- tion of the votes over again.”

The election petition was, therefore, again placed before me for trial in accordance with the obser- vations made by the Hon'ble Supreme Court in the aforesaid judgement, and I stated examining all the ballot papers in question in the presence of the learned counsel for the petitioner as also the learned counsel for the opposite-party No. 1 Sri D. P. S. Chauhan the learned counsel for the elec- tion petitioner had then stated that the figure on ballot paper No. 6 marked against the name of Smt. Manohara is clearly visible to naked eye as figure 1 and it is denied that there is any manu- facturing defect in the said ballot paper and the thing to be seen by this Court according to Rule 73 is whether there is figure 1 or not. Sri R. N. Trivedi, the learned counsel for the opposite party No. 1 made a statement after perusing the original ballot paper marked by this Court figure 6 that a visual examination made in presence of the counsel of the respondents and the petitioner it appeared that there may be some manufacturing defect against the name of Smt. Manohara in the ballot paper marked by figure 6 in the preference column which appeared to have an inherent manu- facturing defect although it could also be read as 1. This, however, can be verified only after an expert has examined the ballot paper. I examined the contentions of the learned counsel for the parties. After considering the arguments raised I observed as follows :—

“This being the position the prayer of the opposite-party No. 1 to adduce evidence to establish that the alleged figure 1 appearing against the name of Manohara on ballot paper No. 6 is the result of the manufacturing defect inherent in the ballot paper itself has got to be allowed. Since this case is to be decided expedi- tiously, the opposite-party No. 1 should produce the expert evidence on 28-2-1983”.

In the course of my order I had observed as follows :—

“It has now to be seen whether there is any figure 1 in the preference column against the name of Manohara and whether it has been written by any other instrument nor provided by the election authorities or by pencil or it is the result of some manufacturing defect inherent in the paper itself as has been contended by the learned counsel for the opposite-party No. 1. There is a dispute on this point between the election petitioner and the opposite-party No. 1. The dispute can obviously be resolved by appreciation of evidence. The learned counsel for the election petitioner submitted that there is already oral evidence on record to show that the opposite party No. 1 has always been taking the mark as figure 1 appear- ing against the name of Manohara as having been marked by the elector him- self hence he should not be permitted to lead further evidence on the point which may go contrary to his pleading or contrary to his stand already taken in the case. This would have been a plausible argument but I am bound by the direction by the Supreme Court. The Supreme Court has clearly asked this court to decide the validity of each reject- ed ballot paper by considering the reason given by the returning Officer and as to whether those reason were valid or un- convincing and then decide the validity of the ballot paper as a whole or in part.”

I had thus passed the order of afore mentioned.

The learned counsel for the petitioner has in the written arguments placed before me that I had already reached a finding that there is figure 1 against the name of Smt. Manohara as also opposite the name of Sri G. C. Bhattacharya, hence keeping in view the stand taken by the opposite-party No. 1 the written statement as also the statement made by the witnesses produced on his behalf it is not now open to the opposite party No. 1 to contend that there is no mark of first preference set opposite the name of Smt. Manohara I may say at once that in my order dated 14-2-1983 I had not reached any final conclusion on the question as to whether there is first preference mark set opposite the name of Smt. Manohara in the ballot paper No. 6. My order dated 14-2-1983 has to be read as a whole. No particular sentence can be extracted out of it nor should it be read in insolution. The portion on which the learned counsel for the petitioner has relied has been quoted by me with a view to make it clear that I had not reached any definite finding on the question as to whether the alleged

mark opposite the name of Smt. Manohara is the mark of first preference made by the elector. I was then of the opinion that in view of the contention of the opposite-party No. 1 that there is some manufacturing inherent defect in the paper itself this may be resolved by taking expert evidence which the opposite-party No. 1 wanted to produce. My aforesaid order dated 14-2-1983 was challenged by the petitioner before the Hon'ble Supreme Court and that has been set aside. The petitioner was not satisfied by my aforesaid order or any finding reached by me in the aforesaid order. She had herself impugned that order before the Hon'ble Supreme Court which has been set aside. She cannot now turn round and say that I have already reached a finding in my aforesaid order dated 14-2-83 which order in fact has been set aside by the Supreme Court. The Supreme Court has now directed that I should decide the validity of the ballot paper No. 6 without taking any oral or documentary evidence on the point. No oral or documentary evidence has hence been taken. The pleadings of the parties have already been set out in detail hereinabove. The arguments raised by the contesting parties have also been set out by me in detail. I would not like to consider these pleas in the light of the observations made by the Hon'ble Supreme Court and in the light of provisions of law.

Ballot paper No. 6 was rejected by the Returning Officer under Rule 73(2)(b) of the said Rules which, as pointed out earlier, provides that a ballot paper shall be invalid on which the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply. It has, therefore, to be seen whether in the ballot paper in question the figure 1 is set opposite the name of more than one candidate or is the figure 1 so placed as to render it doubtful to which candidate it is intended to apply. A bare perusal of the ballot paper No. 6 would show that that figure 1 is not so placed as to render it doubtful to which candidate it is intended to apply. The question now is whether figure No. 1 is set opposite the name of more than one candidate. The preference were marked by the elector blue ink. The first preference has been marked by the elector opposite the name of Sri G. C. Bhattacharya. No other first preference mark has been made in ink by the elector opposite the name of any other candidate. It is the case of the election petitioner that there is a mark of first preference set opposite the name of Smt. Manohara. I have perused that mark. At the outset it must be mentioned that the alleged mark is not ink. It has also not been made with the aid of any other instrument. It seems that it is something which has struck up with the paper. Either it was struck while the paper was being manufactured or thereafter but it is not a mark made by any elector. The question that the parties should be confined

to their pleadings is of little consequence so far as the ballot paper No. 6 is concerned in the sense that firstly the election petitioner said that all the eleven ballot papers were wrongly rejected. Her contention was that even ballot paper No. 6 was wrongly rejected. At this stage Sri Umesh Chandra, the learned counsel for the election petitioner, submitted that the petitioner had also said that the ballot papers were not shown to her. But now the ballot papers have been shown to the petitioner and the petitioner's counsel and they have been seen by them as well as by me. Ballot paper No. 6 has also been seen by them and by me. There is a direction by the Supreme Court that I should decide the validity of all the ballot papers including ballot paper No. 6. A bare perusal of ballot paper No. 6 would show that the mark appearing in the preference against the name of Smt. Manohara cannot be said to be mark made by the elector. Sri R. N. Trivedi on 14-2-1983 had stated that on a visual examination made in presence of the counsel for the respondent and the petitioner it appears that there may be some manufacturing defect against the name of Smt. Manohara in the ballot paper marked by figure '6' in the preference column which appears to have an inherent manufacturing defect although it can also be read as 1. Then he further stated that this, however, can be verified only after an expert has examined the ballot paper. Sri Chauhan, the learned counsel for the election-petitioner stated on the said date that the figure on ballot paper No. 6 marked against the name of Smt. Manohara is clearly visible to naked eye as figure '1' and it is denied that there is any manufacturing defect. Now I have also seen the ballot paper myself very closely and I am of the definite opinion that it is not a first preference mark made by the elector. It is something which is a manufacturing defect or any impurity. The tip of the mark is in the nature of "Y" and is not mark made by the elector with the aid of any instrument whatsoever. Habibul Rahman Nomani had said in his cross-examination that out of the eleven rejected ballot papers there was one ballot paper in which the first preference mark was noted against the name of Smt. Manohara and another first preference mark was noted against the name of one more candidate and that is why the said ballot paper was rejected as invalid. This witness was also of the view that the first preference mark was set opposite the name of Smt. Manohara as also against the name of another candidate and, therefore, this ballot paper was rejected. But I cannot deceive my own eyes. Now I have to decide after perusing the original ballot paper as to whether there is any first preference set opposite the name of Smt. Manohara and I am of the opinion after carefully perusing the original ballot paper No. 6 that there is no mark of first preference by the elector opposite the name of Smt. Manohara. The statement of the other witness Sri Deo Bahadur Singh would also, therefore, be of not much avail in the instant case. The expert evidence has not

been allowed to be taken. I, therefore, record a finding that there is no mark of first preference set opposite the name of Smt. Manohara. That being the position, there was only first preference mark set opposite the name of Sri G. C. Bhattacharya.

Sri Umesh Chandra the learned counsel for the petitioner submitted that the mark in the preference column opposite the name of Smt. Manohara is the figure 1. Though it is not in ink but is set opposite the name of Smt. Manohara and, therefore, it should be taken to be figure 1 and by reason of clause (b) of Sub-rule (2) of Rule 73 the ballot paper was rightly rejected. He also pointedly drew my attention to the second proviso to sub-rule (2) of Rule 73 which reads as follows :—

“Provided further that where the returning officer is satisfied that any such defect as is mentioned in this clause has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected, merely on the ground of such defect.”

I fail to understand how this second proviso to sub-rule (2) is attracted to the facts and circumstances of the case. The defect is not said to have been caused by any mistake or failure on the part of the Presiding Officer or Polling Officer. If the figure 1 has been set by the elector opposite the names of two candidate, then the ballot paper will be invalid in view of the provisions of clause (b) of sub-rule (2) but if the figure 1 has been set opposite one candidate only by the elector and not opposite the name of any other candidate, the ballot paper cannot be held to be invalid. I am of the definite opinion that there is no figure 1 set by the elector opposite the name of Smt. Manohara. I, therefore, do not find any merit in the contentions raised on behalf of the petitioner in this behalf. I therefore hold that ballot paper No. 6 was, therefore, valid and the Returning Officer fell in error in rejecting the said ballot paper as invalid under Rule 73(2)(b).

Ballot paper No. 10.

This ballot paper has also been rejected by the Returning Officer under Rule 73(2)(b). The first preference mark has been set opposite the name of Sri Abdul Rahman Sheikh, third opposite the name of Sri Kalraj, fourth opposite the name of Sri Jagdish Prasad Mathur, fifth opposite the name of Sri G. C. Bhattacharya. Sixth opposite the name of Sri Narendra Singh, seventh opposite

the name of Sri Rameshwar, eight opposite the name of Sri Lakhan Singh. Ninth opposite the name of Sri Siddhu Madan Mohan Singh, tenth opposite the name of Sharda Devi and eleventh opposite the name of Sri J. P. Singh. The ballot paper shall be invalid under rule 73(2)(b) if the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply. This ballot paper seems to have been rejected on the ground that the first preference was set opposite the name of Sri Surendra Mohan as also opposite the name of Sri J. P. Singh. In my order dated 11th December, 1979 it was held that this ballot paper was rightly rejected by the Returning Officer. In this connection the Supreme Court has observed as under:—

“It is difficult to accept this view of the Returning Officer affirmed by the High Court because figure 1 has been clearly marked against the candidate Surendra Mohan and the figure 11 is noted against the candidate, J. P. Singh. There is some overwriting in the strokes of figure 11 but it must be remembered that explanation appended to rule 37-A permits that the figures indicating preferences may be marked in the international form of Indian numerals or in the Roman form or in the form used in any Indian language but shall not be indicated in words. All other figures indicating the preferences have been written in Hindi numerals and 11 is by two strokes having the loop at the top slightly overwritten but the preference is the 11th reference against J. P. Singh, is indisputable and is clearly visible to the naked eye. Obviously this ballot paper marked ‘B’ could not have been rejected on the ground mentioned in rule 73(2)(b).”

I have seen ballot paper No. 10. In view of the above observations of the Hon'ble the Supreme Court I hold that this ballot paper could not have been rejected on the ground mentioned in rule 73(2)(b) and the Returning Officer fell in error in declaring it to be invalid under rule 73(2)(b). This ballot paper is held to be valid.

I have thus recorded my findings on the validity of each of the eleven rejected ballot papers. The Hon'ble the Supreme Court has directed that after deciding the validity of all the rejected ballot papers in question I shall direct computation of votes over again and I may take the assistance of the Chief Electoral Officer or such other officer well versed in computing the votes in this complicated system of counting as considered necessary to determine the final outcome of recount. I had already ordered yesterday that a letter be sent to the Chief Electoral Officer, U.P. either to appear before this Court himself or depute some other

person will conversant with the computation of votes today at 11.00 a.m. The Chief Electoral Officer has deputed Shri G. C. Upreti, Joint Chief Electoral Officer, U.P. Lucknow, for this purpose. He is present in Court. I shall not proceed to compute the votes over again.

Sd/- T. S. MISRA, 7-4-1983

IN THE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH,
LUCKNOW

Civil Misc. Application No. 29(E) of 1983

In

Election Petition No. 2 of 1978

Km. Shradha Devi ... Petitioner

Vs.

Shri K. C. Pant and others ... Opp. parties.

Lucknow, dated: 14-4-1983.

Hon'ble T. S. Misra, J.

While the counting of votes was going on and the surplus of Sri Surendra Mohan was being distributed this application has been moved on behalf of Dr. M. A. Halim by his Attorney Sri Shakir Ali Siddiqi praying that reception of Shradha Devi's surplus on transfer from Surendra Mohan should not be reduced by one and respondent No. 1 should not be permitted to receive one more vote on transfer of surplus from Surendra Mohan as there is no preference in ballot paper No. 1, vote declared valid in favour of Surendra Mohan.

The grounds stated in this application are similar to those stated by Km. Shradha Devi in her application, being Civil Misc. Application No. 27(E) of 1983 and Civil Misc. Application No. 28(E) of 1983. I have already rejected the aforesaid applications of Km. Shradha Devi for the reasons stated in my orders passed separately relating to those applications. The same grounds have been stated by Dr. M. A. Halim in the instant application and I need not repeat the reasons on which the aforesaid two applications of Km. Shradha Devi were rejected. I, therefore, reject this application of Dr. M. A. Halim for the same reasons on which the aforesaid applications of Km. Shradha Devi have been rejected.

Sd/- T. S. MISRA, 14-4-1983

IN THE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH
LUCKNOW

Election Petition No. 2 of 1978

Km. Shradha Devi ... Petitioner
Vs.

Sri K. C. Pant and others ... Opp. parties.
Lucknow : dated 14-4-1983.
Hon'ble T.S. Misra, J.

On the 7th April, 1983 while the counting process was going on and the ballot papers had been placed in parcels as required by the rules and first preference had been counted and thereafter the process of distributing surplus was going on, Sri Banarsi Das, the holder of the power of Attorney of Km. Shradha Devi made the following submission :—

"Sri Surendra Mohan at the time of counting by the Returning Officer secured 41 first preference votes. The required quota to be allocated was 347. Thus surplus to be distributed in his case was 683. Sri K. C. Pant in distribution secured 13 votes at the reduced value of 17, total value 221, Daujee two votes at the reduced value of 17, total value 34, Mandhara one vote at the reduced value of 17, Km. Shradha Devi 24 at the reduced value of 17, total value 408. Total votes distributed 40 exhausted one. Now one rejected vote has been declared valid by the Hon'ble Judge. Shradha Devi has got ten preferences which have been added to her. So, total transferred ballots are 25. Now the enhanced value to be allocated is 3509 and the distributive surplus now is 691 to be distributed by 41 and the reduced value of a transferred vote will be 416.35 will be wasted. Now the counting should be like this :—

Shri K. C. Pant	$13 \times 16 = 208$
Km. Shradha Devi	$25 \times 16 = 400$
Sri Daujee	$2 \times 16 = 32$
Smt. Mandhara	$1 \times 16 = 16$

Sri Umesh Chandra, the learned counsel for the petitioner, submitted as under :—

"Under rule 84 of the Conduct Election Rules, 1961, the Returning Officer completed the counting and declared the result in Form 23 and he prepared and certified a return of the election in Form 23B. The certified signed copies of Form 23B were also sent to the Election Commissioner and the Chief Electoral Officer. Certified copies of Form 23B were also issued to the petitioner and other candidates might also have se-

cured certified copies as well as their agents. The figures arrived at by the Returning Officer cannot now be changed either by deduction or increase. None of the parties ever challenged the figures arrived at as a result of counting by the Returning Officer in the Election Petition. The distribution was not with regard to the number of votes which were accepted as valid. Similarly, the number of ballot papers which were declared invalid was mentioned by the Returning Officer as 11 and in the election petition it was only the eleven rejected ballot papers that were questioned by the election petitioner and if any ballot paper is found to be less than the number of ballot papers declared valid and invalid or found to be more than the number of ballot papers declared valid and invalid, there cannot be any variation at this stage. Only 11 ballot papers found by this Hon'ble Court to be valid should be added to the ballot papers as mentioned in Form 23B prepared as a result of the declaration of result under rule 84."

Shri R. N. Trivedi, the learned counsel for the opposite-party No. 1 submitted as under :—

"Form 23 to which reference has been made contains apparent inaccuracies. One copy which is with the court contains the figure '210' against the number of electors although in fact there were 410 electors; consequently the said chart cannot in its entirety be taken to be correct. In view of the decision of the court rendered today declaring 11 invalid ballot papers to be valid including one declared partly valid, the quota has changed, consequently, the value has changed and it was in the presence of the petitioner, her attorney & her counsel as also the counsel for the respondents and the attorney of respondent No. 16 that the packets containing 421 ballot papers were opened. Each one of us including the attorney and the counsel for the petitioner participated in making parcels and also participated in the computation of the first preference votes and also the second preference votes and it was at the fag end of the computation of the second preference votes that an untenable and uncalled for objection has been raised."

In reply to the submission made by Sri R. N. Trivedi, Sri Banarsi Das, the holder of power of

attorney of the petitioner, submitted as follows :—

"The election return chart duly certified has been sent to this Court. The objection which Sri R. N. Trivedi has made has no meaning. The figure "210" instead of "410" may be a bare inadvertence. It makes no difference. The Court is already in possession of a chart containing 410 votes."

I have considered the above submissions. While remitting the case the Hon'ble Supreme Court has directed vide its judgment dated 26th October, 1982 that this court shall examine all invalid papers, ascertain the reasons for the rejection, satisfy itself whether the reason is valid or unconvincing and decide the validity of the ballot paper as a whole or in part and direct computation of the votes over again. I have accordingly examined all the eleven invalid ballot papers and have recorded in my finding with respect to each of them. I have held ten ballot papers valid as a whole. With respect to the ballot paper marked by me by the figure '8' I have held it to be valid in computation of votes up to and inclusive of the 4th preference and rejected for the preference down below as if the elector had not exercised his further preferences which were optional with him. Thus 420 ballot papers have been held to be valid as a whole and one ballot paper has been held valid partially. Now since it is valid for the purposes of computation of votes upto and inclusive of fourth preference, the elector's preference up to 4 will be taken into account which computing the vote but subsequent preferences marked in this ballot paper No. 8 will not be taken into consideration for the purpose of computation of the votes.

The Returning Officer had rejected 11 ballot papers and held 410 ballot papers valid. The quota was determined as 3417 as would appear from Form No. 23B prepared by the Returning Officer. Sri Abdul Rahman Sheikh, Sri Kamalapati, Sri Kalraj, Sri Jagdish Prasad Mayhur, Sri G. C. Bhattacharya, Sri Narendra Singh, Sri Rameshwar, Sri Lakhna Singh, Sri Siddhu Madan Mohan Singh and Surendra Mohan had obtained more votes than the said quota and were declared elected in first count. After distribution of the surplus votes the Returning Officer had declared Sri Krishna Chandra Pant elected. The petitioner has challenged the election of Sri K. C. Pant. She had alleged that the Returning Officer had committed an error in rejecting the eleven ballot papers in question. She had prayed that the election of Sri Krishna Chandra Pant should be set aside and that after recounting of votes she should be declared elected. Her petition was dismissed by this Court on 11th December, 1979. She preferred an appeal before Hon'ble the Supreme Court. Her appeal was allowed vide judgment and order dated 26th October, 1982 and the case has been remitted to

this Court with the aforementioned directions. On re-examination of the ballot papers I have recorded my finding as mentioned hereinabove with respect to each ballot paper. Now in view of the above findings recorded by me with respect to the eleven ballot papers in question, the quota has obviously changed. The quota is now fixed as 3509. On the basis of this quota as well, Sri Abdul Rahman Sheikh, Sri Kamalapati, Sri Kalraj, Sri Jagdish Prasad Mathur, Sri G. C. Bhattacharya, Sri Narendra Singh, Sri Rameshwar, Sri Lakhman Singh, Sri Siddhu Madan Mohan Singh and Surendra Mohan are found elected in the first count. Now the question is as to who stands elected for the eleventh seat. The counting has to be made in accordance with law and the conduct of Election Rules. In view of the fact that the original value of the votes of Sri Abdul Rahman Sheikh and Sri Surendra Mohan being equal, i.e. each having 4200 value, I drew lots on 7th April, 1983 for the purpose of transferring the surplus as required by sub-rule (3) of rule 79. The lot was drawn in the presence of the learned counsel for the parties as also in the presence of the petitioner. The result of the lot was that Sri Surendra Mohan shall have his surplus first distributed. The second count is, therefore, to take place in accordance with law and the rules and the surplus of Sri Surendra Mohan shall be first distributed. It would be seen from Form No. 23-B, return of election, prepared by the Returning Officer that the surplus of original value of votes of Sri Abdul Rahman Sheikh was 4200 whereas the original value of the votes of Sri Surendra Mohan was 4100, hence the surplus of Abdul Rahman Sheikh was first distributed. Now the eleven rejected ballot papers have also been examined and since 10 ballot papers have been held valid as a whole and one has been held to be partially valid, the original value of votes of Sri Abdul Rahman Sheikh and Sri Surendra Mohan have been found to be equal, each having 4200, the lot was, therefore, drawn as a result of which the surplus of Sri Surendra Mohan is to be distributed first. The figures mentioned in Form 23B prepared by the Returning Officer on 28th March, 1978 cannot, therefore, be the basis for the purpose of re-count. The re-count is to be now made on the basis of votes as stand today when out of eleven rejected ballot papers ten have been found to be valid as a whole and one has been found as partially valid. The objection of the petitioner, therefore, over-ruled.

Sd/- T. S. MISRA,
April, 14th 1983.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW
BENCH, LUCKNOW

Election Petition No. 2 of 1978

Km. Shradha Devi . . . Petitioner

Versus

Shri K. C. Pant . . . Opp. parties.

Hon'ble T. S. Misra, J.

Since the value of votes of Sarvashri Narendra Singh, G. C. Bhattacharya and Siddhu Madan Mohan Singh are equal I draw a lot for the purpose of distribution of surplus of each of them as required by the rules. As a result of the lot Sri Narendra Singh shall have his surplus first distributed, thereafter Sri Siddhu Madan Mohan Singh shall have his surplus distributed and thereafter Sri G. C. Bhattacharya shall have his surplus distributed.

Sd/- T. S. MISRA,

Dated : 14th April, 1983.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW
BENCH, LUCKNOW

Election Petition No. 2 of 1978

Km. Shardha Devi Petitioner

Versus

K. C. Pant . . . Opp. Parties

HON'BLE T. S. MISRA, J.—Since the value of votes of Sarvasri J. P. Mathur, Kalraj and Rameshwar are also equal I draw lot for the purpose of distribution of surplus of each of them as required by the rules. As a result of the lot of Sri J. P. Mathur shall have his surplus first distributed, thereafter, Sri Kalraj shall have his surplus distributed and hereafter Sri Rameshwar shall have his surplus distributed.

Sd/-

T. S. MISRA, J.
14-4-1983.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW
BENCH, LUCKNOW

Election Petition No. 2 of 1978

Km. Shardha Devi Petitioner

Versus

K. C. PANT Opp. Parties

Civil Misc. Application No. 31(E) of 1983

In

Election Petition No. 2 of 1978

Km. Shradha Devi Vs. Sri K. C. Pant and others.

Lucknow dated 15-4-1983.

HON'BLE T. S. MISRA, J.—By this application the petitioner has prayed that this court should review/recall/re-consider its order dated 14-4-1983. The allegations in this application are that this Court has rejected the contention of the applicant that the opposite-party No. 1 could not get the benefit of ballot paper No. 6 and the value of the votes could not also be re-determined in the absence of recriminatory petition and has relied upon the case of Anirudh Prasad v. Rajeshwari Saroj Das and others (A.I.R. 1976 S.C. 2184) decided by the Supreme Court. In para 2 of the application it has been stated that the Supreme Court in the case of J. D. Bondre v. Govind Prasad S. Choudhary (1979) 4 S.C.C. 516 held that a notice of recrimination under section 97 of the representation of the People Act is necessary where the returned candidate or other candidate disputes the grant of further declaration that another candidate be declared elected. On these grounds the applicant has prayed that the order dated 14-4-83 passed by this Court be recalled and reviewed and also re-considered and not only the opposite-party No. 1's election be set aside but the applicant should be declared elected. A copy of this application has been given to the learned counsel for the opposite party No. 1. The application has been opposed.

I have heard Sri Umesh Chandra the learned counsel for the petitioner and also Sri R. N. Trivedi the learned counsel for the opposite-party No. 1.

In order to decide this application it would be necessary to set out certain facts. The applicant had filed the election petition praying that the entire ballot papers of the election be re-scrutinized and recounted and the election of the respondent No. 1 be declared to be void and that the petitioner be declared as having been duly elected as a member of the Rajya Sabha in place of the respondent No. 1. In her petition the petitioner has alleged that all the 11 ballot papers in question had been wrongly rejected by the Returning Officer. The petition was dismissed by this Court but on appeal by the election petitioner the Hon'ble the Supreme Court set aside the order passed by this court and has remitted the case to this Court with the direction that this court shall examine all invalid ballot papers, ascertain the reason for the rejection, satisfy itself whether the reason is valid or unconvincing, and decide the validity of the ballot paper as a whole or in part and direct computation of the votes over again. Pursuant to this direction of Hon'ble the Supreme Court all the 11 ballot papers in question which had been rejected by the Returning Officer as invalid were examined by me and the validity of each one of those ballot papers was considered by me. I have found that out of those 11 ballot papers ten ballot papers were valid as

a whole and one ballot paper marked by me by figure-8 was partially valid. The recomputation of the votes had been started. On 7-4-1983 the constituted Attorney of Km. Shradha Devi made certain submissions orally. Her counsel Sri Umesh Chandra also made certain submissions orally and the reply of Sri R. N. Trivedi, the learned counsel for the opposite-party No. 1, was also made orally. Those oral submissions have been considered by me in my order dated 14-4-1983. I have overruled the objections of the petitioner by my aforesaid order. Then again an application was moved by the petitioner being Civil Misc. Application No. 27(E) of 1983 on 11-4-1983. She had prayed in that application that the transfer value of ballot paper No. 6 which contains 4th preference in favour of the opposite-party No. 1 be not added to the votes secured by the opposite-party No. 1 and no change be permitted in the votes already computed either in the 1st preference or 2nd preference or subsequent preference shown in the chart prepared by the Returning Officer and fresh computation at enhanced value be made as a result of ballot papers declared valid by this court. In paragraph-15 of this application it has been alleged by the petitioner that "Sri K. C. Pant, opposite party No. 1, has not filed recriminatory or counter-election petition to the effect that any of this votes which the election petitioner claims and the distributable value of ballot paper No. 6 is liable to be counted in favour of the opposite party No. 1. The opposite party No. 1 has not claimed that any vote of his has been wrongly counted in election petitioner's favour and not counted in favour of the opposite-party No. 1". "This application was rejected by me by a detailed order on 14-4-1983. The petitioner also moved another application, being civil Misc. Application No. 28(E) of 1983 praying that the Court may proceed with the recounting of votes by taking into consideration 410 votes declared valid as mentioned in the Election Return in Form 23-B, and adding only 11 votes now declared valid. I have rejected that application also for the reasons stated in my detailed order dated 14-4-1983. Thereafter the further counting of votes took place on 14-4-1983 and as a result of that recount the opposite party No. 1 Sri K. C. Pant stands elected. Now the petitioner has moved the instant application praying that I should recall my order dated 14-4-1983 hereby I have held that it was not necessary for the opposite-party No. 1 to file any notice of recrimination under section 97 of the Representation of the People Act. I have based my order on the facts and circumstances operating in this case. I have quoted in extenso the principles of law laid down by the Hon'ble the Supreme Court in Anirudh Prasad v. Rajeshwari Saroj Das and others (A.I.R. 1976 S.C. 2184) and applying those principles I have rejected the contention of the petitioner. The petitioner has, by the instant application, submitted that the Supreme Court in

the case of I.D. Bondre (Supra) has held that a notice of recrimination under section 97 of the Representation of the People Act is necessary where the returned candidate or other candidate disputes the grant of further declaration that another candidate be declared elected. In my view, the decision in the case of J.D. Bondre (supra) does not help the petitioner. The Supreme Court in J.D. Bondre's case has affirmed the view taken in Anirudh Prasad's case (supra) that every order of re-count does not bring section 97 into play. I see no reason to recall my order dated 14-4-1983. No case in fact has been made out for reviewing or re-considering the order dated 14-4-1983. A review petition is not meant to re-argue a case on a point which has already been decided. My order is based on the principles laid down by the Supreme Court in Anirudh Prasad's case. The counting has been made over again and as a result of that counting it has been found that Shri K.C. Pant,

opposite party No. 1, stands elected. The question that the transfer value of ballot paper No. 6 which contains 4 h preference in favour of the opposite party No. 1 be not added to the votes secured by the opposite party No. 1 cannot now be reviewed. This question has already been dealt within my order dated 14-4-1983. The petitioner had, as pointed out earlier, moved an application in this behalf and had also made oral submissions. Her application was rejected. There is, therefore, no justifiable ground now to recall or re-consider the order dated 14-4-1983 or to review the same.

The application is accordingly rejected.

Sd/-

T.S. MISRA

15-4-83

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW

Election Petition No. 2 of 1978

Km. SHRADHA DEVI

..... Petitioner

Versus

K. C. PANT

.... Opp. Parties.

RESULT OF RECOUNT OF VOTES

Number of valid votes	..421 value 42100
Number of member to be elected	..11
Quota (Number of votes sufficient to secure election)	$\frac{..42100}{11+1} = 3508 + 1 = 3509$

Names of candidates	No. of papers	Value of votes of 1st count	
1. Abdul Rahman Sheikh	42	4200	Elected
2. Asif Ali	000	000	
3. Indra Pal Singh	000	000	
4. M. A. Haleem	5	500	
5. Kamla Pati	36	3600	Elected
6. Kalraj	37	3700	Elected
7. Krishan Chandra Pant	25	2500	
8. Jagdish Prasad Mathur	37	3700	Elected
9. G. C. Bhattacharya	38	3800	Elected
10. J. P. Singh	1	100	
11. Dau Ji	4	400	
12. Narendra Singh	38	3800	Elected
13. Manohra	000	000	
14. Ram Chandra Mehrotra	000	000	
15. Rameshwar	37	3700	Elected
16. Lakhan Singh	39	3900	Elected
17. Shradha Devi	2	200	
18. Dr. Siddhu Madan Mohan Singh	38	3800	Elected
19. Surendra Mohan	42	4200	Elected
Total :	421	42100	

DISTRIBUTION OF SURPLUS VOTES OF SURENDRA MOHAN

Total	42
Value	4200
Surplus	$4200 - 3509 = 691$
Exhausted	1
Unexhausted	41
Value	691
	$\frac{691}{41} = 16$
	41

LOSS DUE TO FRACTION 35

K. C. Pant	14	Value	$14 \times 16 = 224$
Dauji	2	„	$2 \times 16 = 32$
Manohra	1	„	$1 \times 16 = 16$
Shradha Devi	24	„	$24 \times 16 = 384$
	41		656
			+35
			691

VOTES AFTER DISTRIBUTION OF SURPLUS

K. C. Pant	2500	+	224	=	2724
Dauji	400	+	32	=	432
Manohra	00	+	16	=	16
Shradha Devi	200	+	384	=	584

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF
ABDUL RAHMAN SHEIKH

Total	* 42
Value	4200
Surplus	$4200 - 3509 = 691$
Exhausted	4
Unexhausted	38
Values	691
	$\frac{691}{38} = 18$
	38

LOSS DUE TO FRACTION=7

		Value	
M. A. Halim	1	1×18	= 18
Dauji	2	2×18	= 36
Ram Chandra Mehrotra	1	1×18	= 18
Manohra	1	1×18	= 18
Shradha Devi	33	33×18	= 594
Total :	38		684
			+ 7
			691

VOTES AFTER DISTRIBUTION OF SURPLUS

M. A. Halim	500	+	18	=	0518
Dauji	0432	+	36	=	0468
Manohra	0016	+	18	=	0034
Ramchand Mehrotra	00	+	18	=	0018
Shradha Devi	0584	+	0594	=	1178

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF
LAKHAN SINGH

TOTAL	39
Value	3900
Surplus	3900—3509 = 391
Exhausted	1
Unexhausted	38
Value	391
	<u> </u> = 10
	38

LOSS DUE TO FRACTION 11

		Value			
K. C. Pant	3	3	×	10	= 30
J. P. Singh	1	1	×	10	= 10
Dauji	1	1	×	10	= 10
Manohra	1	1	×	10	= 10
Ramchandra Mehrotra	2	2	×	10	= 20
Shradha Devi	30	30	×	10	= 300
					<u>380</u>
					+ 11
					<u>391</u>

VALUE AFTER DISTRIBUTION OF SURPLUS

K. C. Pant	2724	+	30	=	2754
J. P. Singh	100	+	10	=	110
Dauji	468	+	10	=	478
Manohra	34	+	10	=	44
Ram Chand Mehrotra	18	+	10	=	28
Shradha Devi	1178	+	300	=	1478

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF
NARENDRA SINGH

Total	38
Value	3800
Surplus	3800—3509 = 291
Exhausted	1
Unexhausted	37
Value	291
	<u> </u> = 7
	37

LOSS DUE TO FRACTION=32

M. A. Halim	1	1 ×	7 =	7
K. C. Pant	5	5 ×	7 =	35
Dauji	1	1 ×	7 =	7
R. C. Mehrotra	1	1 ×	7 =	7
Shradha Devi	29	29 ×	7 =	203
Surplus				
				259
				+ 32
				291

VALUE AFTER DISTRIBUTION OF SURPLUS

M. A. Halim	0518	+	7 =	0525
K. C. Pant	2754	+	35 =	2789
Dauji	0478	+	7 =	0485
R. C. Mehrotra	0038	+	7 =	0045
Shradha Devi	1478	+	203 =	1681

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF
SIDDHU MADAN MOHAN SINGH

Total	38
Value	3800
Surplus	300—3509=291
Value	291
	—=8
	36

LOSS DUE TO FRACTION=3

	Exhausted	2		
M. A. Halim	1	1 ×	8 =	8
K. C. Pant	5	5 ×	8 =	40
J. P. Singh	2	2 ×	8 =	16
Dauji	2	2 ×	8 =	16
R. C. Mehrotra	2	2 ×	8 =	16
Shradha Devi	24	24 ×	8 =	192
	36			288
				+ 8
				291

VALUE AFTER DISTRIBUTION OF SURPLUS

M. A. Halim	0525	+	8 =	0533
K. C. Pant	2789	+	40 =	2829
J. P. Singh	0110	+	16 =	0126
Dauji	0485	+	16 =	0501
R. C. Mehrotra	45	+	16 =	0061
Shradha Devi	1681	+	192 =	1873

Sd/-

T. S. MISRA

**DISTRIBUTION OF SURPLUS VOTES OF
G. C. BHATTACHARYA**

Total	38
Value	3800
Surplus	$3800 - 3509 = 291$
Exhausted	5
Unexhausted	33
Value	$\frac{291}{33} = 8$

LOSS DUE TO FRACTION 27

K. C. Pant	15	$15 \times 8 =$	120
Shradha Devi	15	$15 \times 8 =$	120
Manohra	1	$1 \times 8 =$	8
Indra Pal	1	$1 \times 8 =$	8
Dauji	1	$1 \times 8 =$	8
	<u>33</u>		<u>264</u>
		+	<u>27</u>
			<u>291</u>

VALUE AFTER DISTRIBUTION OF SURPLUS

K. C. Pant	2829	+	120	=	2949
Shradha Devi	1873	+	120	=	1993
Manohra	0044	+	8	=	0052
Indra Pal	00	+	8	=	0088
Dauji	0501	+	8	=	0509

Sd/-

T. S. MISRA

**DISTRIBUTION OF SURPLUS VOTES OF
JAGDISH PRASAD MATHUR**

Total	37
Value	3700
Surplus	$3700 - 3509 = 191$
Exhausted	2
Unexhausted	35
Value	$\frac{191}{35} = 5$

LOSS DUE TO FRACTION 16

Ram Chand Mehrotra	2	$2 \times 5 =$	10
Shradha Devi	33	$33 \times 5 =$	165

VALUE AFTER DISTRIBUTION OF SURPLUS

Ram Chand Mehrotra	61	$\times 10 =$	71
Shradha Devi	1993	$\times 165 =$	2158

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF KALRAJ

Total	37			
Value	3700			
Surplus	3700	—	3509	= 191
Exhausted	2			
Unexhausted	35			
Value	191			
	<u> </u>	=	5	
	36			

LOSS DUE TO FRACTION 11

			Value	
Shradha Devi	34	34 ×	5 =	170
K. C. Pant	1	1 ×	5 =	5

VALUE AFTER DISTRIBUTION OF SURPLUS

K. C. Pant	2949	+	5 =	2954
Shradha Devi	2158	+	170 =	2328

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF RAMESHWAR

Total	37			
Value	3700			
Surplus	3700	—	3509	= 191
Exhausted	2			
Unexhausted	35			
Value	191	=	5	
	<u> </u>			
	35			

LOSS DUE TO FRACTION 16

Shradha Devi	27	27 ×	5 =	135
Manohra	1	1 ×	5 =	5
Dauji	2	2 ×	5 =	10
K. C. Pant	4	4 ×	5 =	20
J. P. Singh	1	1 ×	5 =	5
			<u> </u>	
			175	
			+ 16	
			<u> </u>	
			191	

VALUE AFTER DISTRIBUTION OF SURPLUS

Shradha Devi	2328	+	135 =	2463
Manohra	0052	+	5 =	0057
Dauji	0509	+	10 =	0519
K. C. Pant	2954	+	20 =	2974
J. P. Singh	0126	+	5 =	0131

Sd/-

T. S. MISRA

DISTRIBUTION OF SURPLUS VOTES OF
KAMLA PATI

Total	36			
Value	3600			
Surplus	3600	—	3509	= 191
Exhausted	24			
Unexhausted	12			
Value	91			
	—			= 7
	12			

LOSS DUE TO FRACTION 7

Shradha Devi	2	2 ×	7 =	14
K. C. Pant	9	9 ×	7 =	63
M. A. Halim	1	1 ×	7 =	7

VALUE AFTER DISTRIBUTION OF SURPLUS

Shradha Devi	2463	+	14	=	2477
K. C. Pant	2974	+	63	=	3037
M. A. Halim	533	+	7	=	540

Sd/-

T. S. MISRA

SOLIMINATION OF CANDIDATES

1. Asif Ali alias Sanjhu secures no Votes, hence eliminated.

2. Indrapal Singh eliminated. His votes are distributed as follows :—

Shradha Devi gets vote of value of 8 and her value of votes becomes $2477+8=2485$.

3. Manohra eliminated. Her votes are distributed as follows :—

Shradha Devi—44
K. C. Pant—8
Exhausted—5

Thus the value of votes of Shradha Devi now become $2485+44=2529$

and

The value of votes of K.C. Pant now becomes $3037+8=3045$.

4. Ram Chandra Mehrotra eliminated. Total value of his votes was 71. Exhausted 23, unexhausted 48 which are distributed as follows :—

Shradha Devi gets 48 and now her total becomes $2529+48=2577$.

5. J.P. Singh eliminated. Total value of his votes was 131, which are distributed as follows :—

Shradha Devi gets 121
Dauji 10.

So total of Shradha Devi now becomes $2577+121=2698$ and total of Dauji becomes $519+10=529$.

6. Dauji eliminated. His total value was 529 which have been distributed as follows :—

Shradha Devi gets 151

K.C. Pant gets 200

Exhausted 178.

Thus now total of Shradha Devi becomes $2698+151=2849$. Total of K.C. Pant becomes $3045+200=3245$.

7. M.A. Halim eliminated. Total value of his votes was 540 and the same have been distributed as follows :—

Shradha Devi—407

K.C. Pant—100

Exhausted—33.

Now the total value of votes secured by Shradha Devi is $2849+407=3256$ and the total value of votes secured by K. C. Pant is $3245+100=3345$.

Thus the value of papers of Shri K.C. Pant exceeds the value of papers of Shradha Devi by 89. Hence K.C. Pant, according to rule 81(2) of the Conduct of Election Rules, 1961 stands elected and it is declared accordingly.

Sd/-

T.S. MISRA

14-4-1983.

[No. 82/UP/2/78]

O. N. NAGAR, Under Secy.

आदेश

नई दिल्ली, 7 जुलाई, 1983

आ० अ० 63:—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट बिहार विधान सभा के उपनिर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा उक्त सारणी के स्तम्भ (5) में यथा उपदणित रूप में अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है।

और, उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है तथा आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है।

अतः अब निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्ति को संसद को किन्हीं भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के के लिए इस आदेश की तारीख से तीन वर्षों की कानाबन्धि के लिए निरहित घोषित करता है :

सारणी

क्रम सं०	निर्वाचन की विशिष्टियाँ सं० और नाम	विधान सभा निर्वाचन क्षेत्र की सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
(1)	(2)	(3)	(4)	(5)
1.	बिहार विधान सभा के लिए उप निर्वाचन-1982	54-साहेबगंज	श्री नगेन्द्र कुमार सिंह ग्राम व डाकघर समस्तीपुर, जिला मुजफ्फरपुर (बिहार)	कोई भी लेखा दाखिल नहीं किया है।

[सं० बिहार-वि० सं०/54/82 (उप)]

आदेश से,

धर्मवीर, अवर सचिव
भारत निर्वाचन आयोग

ORDER

New Delhi, the 7th July, 1983

O.N. 63.—Whereas the Election Commission is satisfied that the contesting candidate specified in column (4) of the Table below at the Bye-election to the Bihar Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses at all, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

And, where as the said candidate has not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that he has no good reasons or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this Order :

TABLE

Sl. No.	Particulars of election	S.No. and Name of Constituency	Name and address of Candidate	Reason of disqualification
(1)	(2)	(3)	(4)	(5)
1.	Bye election to the Bihar Legislative Assembly, 1982	54-Sahebganj Assembly Constituency	Shri Nagendra Kumar Singh, Vill. & P. O. Sammastipur, Distt. Muzaffarpur (Bihar)	Failure to lodge any account of election expenses.

[No. BR-LA/54/82 (Bye)]

By Order,

DHARAM VIR, Under Secy.
Election Commission of India

आदेश

नई दिल्ली, 7 जुलाई 1983

आ० अ० 64:—निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी जिसने सारणी के स्तम्भ 2 में विहित राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है जैसा कि लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित है, अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं ;

और, उक्त अभ्यर्थियों ने उसे सम्यक सूचना दिए जाने के बाद भी उक्त असफलता के लिए न तो कोई कारण दिया है और न ही कोई स्पष्टीकरण दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास उक्त असफलता के लिए कोई उपयुक्त कारण या न्यायोचित्य नहीं है ;

अतः अब उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति संसद के किसी सदन के या राज्य की विधान सभा या विधान परिषद के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से 3 वर्ष की कालावधि के लिए निरहीत किया जाता है ।

सारणी

क्रम सं० निर्वाचन के विवरण	सभा निर्वाचन-क्षेत्र की क्रम सं० तथा नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निरहेता के कारण
1	2	3	4
1. कर्नाटक विधान सभा के लिए साधारण निर्वाचन,	12- अफजलपुर चिनचोली तालुक-गुलबर्गा	श्री शांतप्पा डोडामणि केरी भोसगा पो० सैयद चिनचोली, तालुक-गुलबर्गा	विधि द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल ।
2. -वही-	-वही-	श्री शिवसरणाप्पा सिद्धाप्पा होसमानी पो० अफजलपुर तालुक-अफजलपुर जिला-गुलबर्गा ।	-वही-
3. -वही-	13-चीतापुर	श्री रत्नाय्या गंगाय्या कोरवार पो० कोरवार तालुक-चीतापुर ।	-वही-
4. -वही-	-वही-	शिवसरणाप्पा बशोटप्पा पो० तेलगेरी चीतापुर ।	-वही-
5. -वही-	133-होलेनरसीपुर	श्री एल० रंगेगोवडा, सुपुत्र लक्ष्मीगोवडा, ओपिनाहल्ली, येलीयुर पो० डंडीगानाहल्ली होबली, चन्नारायापटना तालुक	-वही-
6. -वही-	-वही-	श्री एम० एस० सांताराजू सुपुत्र एम० एन० शिवप्पो, फोरे, होलेनरसीपुरा	-वही-
7. -वही-	193-पारसगाड़	श्री कब्बुर बासवराज आदिवेप्पा, स्थान व पो० यरजारवी तालुक-पारसगाड़	-वही-
8. -वही-	-वही-	श्री पाटिल (उर्फ) कप्पान्नावार, शंकरगोवडा, होनागोवडा स्थान कवलपेट, ता. सोनदसी ।	-वही-

1	2	3	4	5
9.	कर्नाटक विधान सभा के लिए साधारण निर्वाचन	195-किट्टूर	श्री तवागामथ महादेवाय्या वासवनेय्या, स्थान व पो० सूतागट्टी तालुक बेलहोंगल श्री रेड्कर वासुदेव, गुंडोपंत म० सं० 195/3, रामघाट रोड, हिन्डलगा तालुक, बेलगाम।	विधि द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल। —वही—
10.	—वही—	197-बेलगाम	श्री टुक्कर निगप्पा येलप्पा म० सं० 142, हुडाली तालुक बेलगाम।	—वही—
11.	—वही—	199-बागेवाडी	श्री कम्बाली विट्टप्पा गिड्डालाक्काप्पा स्थान व पो० जोकानाटी (भासागुप्पी) तालुक गोकक, जि० बेलगाम।	—वही—
12.	—वही—	201-अराभावी	श्री गोटाडाकी सिदर्लिंगप्पा बंलाप्पा सी०टी०एस० सं० 1925 सोमावार पेठ, गोकक, जिला—बेलगाम।	—वही—
13.	—वही—	—वही—	श्री नायक बालप्पा वासुदेव स्थान व पो० कलीमोड़, तालुक गोकक, जिला—बेलगाम।	—वही—
14.	—वही—	—वही—	श्री बिराज मारुति रंगप्पा सी० टी० एस० सं० 157/35 बधुर गल्ली, बेलगाम।	—वही—
15.	—वही—	—वही—	श्री भास्कर यमन्तप्पा मारुति हुक्केरी, जिला—बेलगाम।	—वही—
16.	—वही—	202-हुक्केरी	श्री इब्नाहीम पापालाल, मुल्ला केस्टी तालुक हुक्केरी, जि० बेलगाम।	—वही—
17.	—वही—	203-शंकेश्वर	श्री गिजावानी बालप्पा भीमप्पा कुर्नी तालुक, हुक्केरी।	—वही—
18.	—वही—	—वही—	श्री जोशीसुभाष श्रीधर, म० सं० 1877 जोशी गली, निप्पानी।	—वही—
19.	—वही—	204-निप्पानी	श्री लालप्पा घोषप्पा कसाई, स्थान व पो० मंजरी, तालुक चिकोडी।	—वही—
20.	—वही—	205-सदलगा	श्री चन्तया वुन्दय्या, हीरेमठ स्थान व पो० कोकटनूर तालुक अथानी।	—वही—
21.	—वही—	209-अथानी		

[सं० 76/कर्ना०/83 (1-21)]

आदेश से,

बी० के० राव, अवर सचिव,
भारत निर्वाचन आयोग

ORDER

New Delhi, the 7th July, 1983

O.N. 64.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

And, whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice, Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sr. No.	Particulars of election	S.No. & Name of the Assembly Constituency	Name of the contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to Karnataka Legislative Assembly, 1983.	12—Afzalpur	Shri Shantappa Dodda mani, Keri Bhosga Post, Syed Chincholi, Taluk Gulbarga.	Failed to lodge any account of his election expenses as required by law
2.	-do-	-do-	Shri Shivasharnappa Siddappa Hosmani, Post, Afzalpur, Taluk Afzalpur, District Gulbarga.	-do-
3.	-do-	13—Chitapur	Shri Rachyya Gangayya Korwar, P.O. Korwar Taluk, Chitapur.	-do-
4.	-do-	-do-	Shri Shivasharnappa Bahatteppa, P.O. Telgeri, Chitapur.	-do-
5.	-do-	133—Holenarasipur	Shri L. Rangegowda, S/o Laxmegowda, Oopinahalli, Yeliyur Post, Dandiganahalli Hobli, Channarayana Taluk	-do-
6.	-do-	-do-	Shri M.S. Shantaraju, S/o M.N. Shivappa, Fore, Holenarasipura.	-do-
7.	-do-	193—Parasgad	Shri Kabbur Basavaraj Adivappa, At & Post Yajarvi, Taluk Parasgad.	-do-
8.	-do-	-do-	Shri Patil (alias) Kappanavar Shankargouda Honagouda, At Kaval Peth, Saundatti	-do-

1	2	3	4	5
9.	General Election to Karnataka Legislative Assembly 1983.	195-Kittur	Shri Tavagamath Mahadevayya Basuwanneyya, At P.O. Sutagatti, Taluk Bailhongal.	Failed to lodge any account of his election expenses as required by law
10.	-do-	197-Belgaum	Shri Redkar Vasudeo Gundopant, H.No. 195/3, Ramaghat Road, Hindalga Taluk, Belgaum.	-do-
11.	-do-	199-Bagewadi	Shri Tukkar Ningappa Yelappa, H. No. 142, Hudali, Taluk Belgaum.	-do-
12.	-do-	201-Arabhavi	Shri Kambali Vittappa Gid-dalakkappa, At post Jekkanatti (Masaguppi); Taluk Gokak, District Belgaum.	-do-
13.	-do-	-do-	Shri Gotadaki Siddlingappa Balappa, CTS No. 1925, Somawar Peth, Gokak District, Belgaum.	-do-
14.	-do-	-do-	Shri Naik Balappa Vasudev, At post Kuligod, Taluk Gokak, District Belgaum.	-do-
15.	-do-	-do-	Shri Biraj Maruti Rangappa, CTS No. 157/35, Bandhur Galli, Belgaum.	-do-
16.	-do-	202-Hukkeri	Shri Bhaskar Yamanappa Maruti, Hukkeri, District Belgaum.	-do-
17.	-do-	203-Sankeshwar	Shri Ibrahim Papalal Mulla, Kesti, Taluk Hukkeri, District, Belgaum.	-do-
18.	-do-	-do-	Shri Gizavani Balappa Bhimappa, Kurni, Taluk Hukkeri.	-do-
19.	-do-	204-Nippani	Shri Joshi Subhash Sridhar, H.No. 1877, Jo Uhis Galli, Nippani	-do-
20.	-do-	205-Sadalga	Shri Lalappa Bhondappa Kasai, At post Manjari, Taluk Chikodi.	-do-
21.	-do-	209-Athani	Shri Channya Bundyya Hiremath, At post Kokatnur, Taluk Athani.	-do-

(No. 76/KT/83 (1 to 21))

By Order.

V. K. RAO, Under Secy.,
Election Commission of India

आदेश

नई दिल्ली, 7 जुलाई 1983

आ० अ० 65.—निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी जिसने सारणी के स्तम्भ 2 में बिहि: राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है, जैसा कि लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित हैं, अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं।

और, उक्त अभ्यर्थियों ने उसे सभ्यक सूचना दिए जाने के बाद भी उक्त असफलता के लिए न तो कोई कारण दिया है और न ही कोई स्पष्टीकरण दिया है और निर्वाचन आयोग का उनके द्वारा दिए गए आवेदनों पर यदि कोई हो तो बिचार करने के बाद, यह समाधान हो गया है, कि उसके पास उक्त असफलता के लिए कोई उपयुक्त कारण या न्यायोचित्य नहीं है;

अतः अब उक्त अधिनियम की धारा 10 क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति संसद के किसी सदन के या राज्य की विधान सभा या विधान परिषद के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से 3 वर्ष की कालावधि के लिए निरहित किया जाता है।

सारणी

क्रम सं०	निर्वाचन का विवरण	सभा निर्वाचन क्षेत्र की क्रम सं० तथा नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निरर्हता के कारण
1	2	3	4	5
1.	नागालैण्ड विधान सभा के लिए साधारण निर्वाचन, 1983	8-पश्चिमी अंगामी सभा निर्वाचन क्षेत्र	श्री सी० के० नखरो हास्पिटल कालोनी कोहिमा, नागालैण्ड	लेखा दाखिल नहीं किया
2.	-वही-	-वही-	श्री एन टी० नरवारो न्यू मार्किट कोहिमा, नागालैण्ड	-वही-
3.	वही-	-वही-	श्री रुपफुकरियेटो सोउजा, बी० पी० ओ० कोहिमा, नागालैण्ड	-वही-

[सं० 76/नागालैण्ड-बि० स०/83]

ORDERS

New Delhi, the 7th July, 1983

O.N. 65.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Nagaland Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of Election	Sl. No. & name of assembly constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General election to Nagaland Legislative Assembly 1982.	8-Western Angami Assembly Constituency	C.K. Nakhro Hospital Colony Kohima, Nagaland	Account not lodged
2.	-do-	-do-	Sh. N.T. Nakhro New Market Kohima, Nagaland.	-do-
3.	-do-	-do-	Sh. Ropfukhrieto Suoza B.P.O. Kohima Nagaland.	-do-

[No. 76/NL-LA/83]

आ० अ० 66. —निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी जिसने सारणी के स्तम्भ 2 में विहित राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है, जैसा कि लोक प्रतिनिधित्व अधिनियम 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित है, अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं।

और उक्त अभ्यर्थियों ने उन्हें सम्यक सूचना दिए जाने के बाद भी उक्त असफलता के लिए न तो कोई कारण दिया है और न ही कोई स्पष्टीकरण दिया है और निर्वाचन आयोग का उनके द्वारा दिए गए आवेदनों पर यदि कोई हो तो विचार करने के बाद, यह समाधान हो गया है कि उसके पास उक्त असफलता के लिए कोई उभयुक्त कारण या न्यायोचित्य नहीं है ;

अतः अब उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति संसद के किसी सदन के या राज्य की विधान सभा या विधान परिषद् के सदस्य चुने जाने या होने के लिए इस आवेश की तारीख से 3 वर्ष की कालावधि के लिए निरहित किया जाता है।

सारणी

क्रम सं०	निर्वाचन के विवरण	सभा निर्वाचन क्षेत्र की क्र० सं० तथा नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निरर्हता के कारण
1	2	3	4	5
1.	त्रिपुरा विधान सभा के लिए साधारण निर्वाचन 1983	4-बरजाला सभा निर्वाचन-क्षेत्र	श्री चिताबिन ग्राम० व पो० पश्चिम भुवनबन पश्चिम त्रिपुरा	लेखा दाखिल नहीं किया।
2.	-वही-	6 अगरतला सभा निर्वाचन-क्षेत्र	श्री कृष्णदेव बर्मा एडवाईजर चौमुहानी कृष्ण नगर अगरतला	-वही-
3.	-वही-	38-हृष्यामुख सभा निर्वाचन-क्षेत्र	श्री निरंजन चक्रवर्ती ग्राम व पो० सरणीमा बेलनिदा साउथ-त्रिपुरा, त्रिपुरा।	-वही-

[सं० 76/त्रिपुरा-वि० सं०/83]

आदेश से,

सी० एल० रोज, अवर सचिव,

भारत निर्वाचन आयोग

O.N. 66.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Tripura Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the

said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of Election	Sl. No. and Name of Assembly Constituency	Name of the contesting candidates.	Reason for disqualification
1	2	3	4	5
1.	General Election to Tripura Legislative Assembly 1983.	4-Birjala Assembly Constituency	Shri Chitta Bin Vill. and P.O. Paschim Bhubanban West Tripura.	Account not lodged.
2.	-do-	6-Agartala Assembly Constituency	Shri Krishna Deb Barma Advisor Choumuan Krishnanagar, Agartala.	-do-
3.	-do-	38-Hrishyamukh Assembly Constituency	Shri Niranjan Chakraborty Vill. & P. O. Sarashima Belonia South Tripura, Tripura.	-do-

[No. 76 TP-LA/83]

By Order,

C.L. ROSE, Under Secy.,

Election Commission of India

आदेश

नई दिल्ली, 7 जुलाई, 1983

आ० अ० 67.—निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी जिसने सारणी के स्तम्भ 2 में विहित राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र में हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है, अपने निर्वाचन व्ययों का लेखा विधि द्वारा अपेक्षित समय के अन्दर और रीति से दाखिल करने में असफल रहा है। जैसा कि लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गये नियमों द्वारा अपेक्षित है।

और, उक्त अभ्यर्थियों ने उसे सम्यक सूचना दिए जाने के बावजूद भी उक्त असफलता के लिए न तो कोई कारण दिया है और न ही कोई स्पष्टीकरण दिया है और निर्वाचन आयोग का उनके द्वारा दिए गए आवेदनों पर, यदि कोई हो तो, विचार करने के बावजूद यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई उपयुक्त कारण या न्यायोचित्य नहीं है ;

अतः, अब उक्त अधिनियम की धारा 10A के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति संसद के किसी सदन के या राज्य की विधान सभा या विधान परिषद के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से 3 वर्ष की कालावधि के लिए निरहित किया जाता है।

सारणी

क्रम सं०	निर्वाचन के विवरण	निर्वाचन क्षेत्र की तथा नाम	क्रम सं०	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निर्णय के लिए कारण
1	2	3	4	5	
1.	1982 में हुए केरल विधान सभा के लिए साधारण निर्वाचन	69-वडाक्कारा	श्री वाल्सन गोपालन पानी क्केस्सरी थिरुपुर पुथेनवेली पो०	निर्वाचन व्ययों का कोई लेखा दाखिल करने में असफल।	
2.	-वही-	-वही-	श्री सुमन वेलायुधान, पल्लानकाडु, मूयुक्काम पो०, केरल	निर्वाचन व्ययों को लेखा विधि द्वारा रीति में दाखिल करने में असफल ,	
3.	-वही-	105-थिरुवल्ला	श्री ए० अन्नथाकृष्णन कोडियाट्टु थीपानी थिरुवल्ला, केरल	निर्वाचन व्ययों का कोई लेखा दाखिल करने में असफल।	

[सं० 76 / केरल / 83 / (146-147)]

आदेश से,

एम० एल० वाही, अवर सचिव
भारत निर्वाचन आयोग

ORDER

New Delhi, the 7th July, 1983

O.N. 67.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column 4 of the Table below at the election to the State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses within the time and in manner as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And, whereas, the said candidate have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S.No. & Name of the assembly constituency	Name of the contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to the Kerala Legislative Assembly held in 1982.	69. Vadakkekara	Shri Valsan Gopalan	Failure to lodge any ac- count of his election ex- penses.
2.	-do-	-do-	Shri Suman Velayudhan	Failure to lodge account in the manner required by law.
3.	-do-	105. Thiruvalla	Shri A. Ananthakrishnan	Failure to lodge any account.

[No. 76/KL/83(146-147)]

By Order,
M.L. WAHL Under Secy.,
Election Commission of India.

